

Award No. 1583
Docket No. TE-1648

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, the Boston and Maine Railroad, that H. M. Bond be reinstated to the position of Agent at Ipswich, Mass., to which he was regularly assigned when removed by the Carrier, October 30, 1940, and that he be paid for time lost."

EMPLOYEES' STATEMENT OF FACTS: "H. M. Bond has been in the service of this Carrier approximately forty-three (43) years and was regularly assigned to the position of Agent at Ipswich, Mass., in the month of February 1934, under the rules of the Telegraphers' Agreement, which position he held until removed therefrom by the Carrier on October 30, 1940.

"An Agreement, bearing effective date of July 1, 1939, containing 'rules applicable to employes in station, telegraph and signal tower service and wage table' is in existence between the parties to this dispute and was in effect during the period of this claim.

"The duties and responsibilities of the Agent at Ipswich, Mass., prior to April 1, 1940, were such that they could be handled by one man and were so handled by Agent Bond.

"On April 2, 1940, a company known as the 'Hygrade Sylvania Corporation,' manufacturers of electric light equipment, opened a plant at Ipswich and soon thereafter started shipping their products over Boston and Maine rails from its Ipswich Station, which greatly increased the Carrier's business at that point, likewise the work, duties and responsibilities of the Agent.

"Effective June 11, 1940, less-than-carload freight shipments which had formerly moved from Ipswich to Boston via truck and highway were brought to the Ipswich Freight House to be checked by the Agent as delivered to him, following which he issued waybills for the shipments, reported in connection therewith, making necessary records of same and entries in station accounts and shipments then moved by rail from the Ipswich Station. This arrangement also increased the work, duties and responsibilities of the Agent.

"Effective June 22, 1940, this Carrier put into effect at Ipswich 'Free Pick-Up and Delivery Service' for its patrons. This arrangement also increased the work, duties and responsibilities of the Agent.

"On June 8, 1940, Agent Bond addressed a letter to Mr. C. A. Came, Superintendent, and requested assistance in handling the greatly increased volume of business at Ipswich Station, but none was furnished. Mr. Came replied to that letter June 12, 1940.

"On July 27, 1940, Agent Bond addressed another letter to Superintendent Came, referring to previous correspondence and called his attention

"At conference April 10, 1941 between General Chairman and Assistant General Manager, the General Chairman presented 'Statement of Claim' as shown in this submission. This was the first time a statement of the time claim was made to any representative of the Railroad.

"Rule 14 of Agreement revised to July 1, 1939 provides:—

'An employe disciplined or who considers himself unjustly treated, shall have a fair and impartial hearing, provided written request is presented to his immediate superior within ten (10) days of the date of advice of discipline * * * *.'

"As shown in 'Statement of Facts,' Mr. Bond asked for a hearing October 26, 1940 but Local Chairman, Order of Railroad Telegraphers on October 29, 1940 advised Superintendent Bond did not request hearing at that time and no written request was made for hearing between October 29, 1940 and November 25, 1940 when hearing was held.

"Rule 14 further provides:—

'If the final decision decrees that charges against the employe are not sustained, the records shall be cleared of the charge; if suspended or dismissed, the employe will be returned to former position, and paid for all wages lost less amount earned in any other service.'

"Charges against Agent Bond were sustained. So he is not entitled to any pay for time lost.

"Rule 6, last paragraph, reads:—

'Claims for any other compensation must be filed with proper officials within sixty (60) days from date such service was performed, otherwise such claims will be null and void.'

"No claims were filed for 192 days after Mr. Bond was relieved at Ipswich and 162 days after he was notified he could not go back to Ipswich, but could go back to work. If he had gone back to work when he was permitted to, he could have worked steadily and most of the time as Agent at Rowley, Mass., only about four (4) miles from Ipswich.

"Owing to age of Mr. Bond and his length of service, the Management in letter of November 30, 1940, left it so that he could, under the seniority rules, have employment, which we believe the members of the Board will recognize as being fair under all the circumstances."

OPINION OF BOARD: The record in this case discloses contentions which so over-shadowed the question of the claimant's ability or inability to perform the work of his position at Ipswich as to leave doubt as to the consideration given the whole question of his fitness to continue in that position when test thereof, as shown by this record, was in progress.

In view of this situation the Division feels that continued consideration of that whole question may be most satisfactorily determined by returning Agent Bond to his former position at Ipswich without compensation for time lost.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That in accord with above Opinion, H. M. Bond shall be returned to the position of Agent at Ipswich, Mass., without compensation for time lost.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1941.