

Award No. 1790
Docket No. TE-1778

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe Railway Company that no deduction be made with respect to the pass rights of Telegrapher R. P. Bailey, who was reinstated to service with full seniority rights pursuant to the provisions of Award No. 1285 (Docket TE-1142) of the National Railroad Adjustment Board, Third Division, for the time, April 21, 1939, to January 10, 1941, he was improperly off the carrier's payroll.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute, copies of which are on file with the National Railroad Adjustment Board.

R. P. Bailey established and retains a seniority date of July 23, 1926 on the Western Relay Division which includes the general telegraph office, Amarillo, Texas.

Mr. Bailey was dismissed from service April 21, 1939 on a charge of being insubordinate April 19, 1939. The dispute reached the National Railroad Adjustment Board, Third Division, in Docket TE-1142, (Award 1285), the "Statement of Claim" reading:

"Claim of the General Committee of the Order of Railroad Telegraphers, the Atchison, Topeka and Santa Fe Railway, that R. P. Bailey be reinstated to the position of printer-clerk in Amarillo, Texas, telegraph office to which he was regularly assigned when dismissed from the carrier's service April 21, 1939 and that he be paid for time lost."

The "Opinion of Board" and "Award" (Award 1285 dated December 17, 1940) read:

"OPINION OF BOARD: R. P. Bailey, while employed as printer-clerk, Amarillo, Texas, was dismissed from service April 21, 1939, on charge of insubordination on April 19, 1939. In accord with Article V of the Agreement, a formal investigation was held, May 29, 1939, which resulted in a decision substantiating the charge of insubordination.

"We find in the record the following statement by Mr. E. K. Metzendorf, Assistant Superintendent of Telegraph:

"The charge, Mr. Bailey, is insubordination and not as to your ability as a printer-clerk."

the reasons for my inability to render a decision on your claim have been repeatedly stated and are well known to you. The Carrier will accordingly protest any effort on your part to have that claim adjudicated by the National Railroad Adjustment Board, Third Division, until such time as you present to the Carrier some evidence that paragraph (a) of Article XXII of the Telegraphers' schedule has been violated.

Yours truly,

/s/ S. C. Kirkpatrick."

Under the circumstances and inasmuch as under the Telegraphers' Schedule and Section 2—First of the Railway Labor Act the parties are enjoined to exert every reasonable effort to settle all disputes before referring them to the Board, and as the record is evidence that the Employees have not so proceeded, it is the position of the Carrier that the dispute has not been handled as required by the agreement of the parties and by Section 3—First (i) of the Act, and on that account is not one which the Board may receive and hold hearing upon.

OPINION OF BOARD: The facts of record present no different issue than that presented in Docket No. TE-1777, Award 1789. That award is controlling in this dispute.

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 there is disclosed no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1942.