

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)
(INTERURBAN ELECTRIC RAILWAY COMPANY)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The carrier violated the Clerks' Agreement when they failed to render a decision within ten days after completion of investigation of charge that Mr. Ray Tufveson had violated Rule 807 of the Rules and Regulations of the Transportation Department, and refused to compensate Mr. Tufveson for net wage loss.

(b) Mr. Tufveson be compensated at the daily rate of his position for each working day he was held out of service during the period July 2nd through July 19th, 1941.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of October 1, 1940, as to rules and working conditions, is in effect between the parties to this dispute. The claimant involved in this claim is covered by the agreement.

Prior to July 2, 1941, Mr. J. R. (Ray) Tufveson occupied position No. 20 —Steno-Clerk—with Interurban Electric Railway Company, a corporation wholly owned and controlled by Southern Pacific Company.

On July 2nd, 1941, Mr. Tufveson was taken out of service by the company; on July 10th he was notified that he was charged with violation of Rule 807 of Rules and Regulations of the Transportation Department and that hearing to investigate that charge would be held on July 11th at which he was instructed to attend.

For ready reference of the Board, we quote below Rule 807 as hereinabove referred to:

"807. The affairs of the company must not be divulged nor access to the company's records permitted without proper authorization."

The hearing set for July 11th was duly held. Mr. Tufveson attended accompanied by Brotherhood representative. Transcript of the testimony taken at the investigation is shown as a part of this claim as Employees' Exhibit "A."

Nothing contained in the transcript of testimony of the formal investigation (Exhibit "B") of July 11, 1941 in any way tends to free the claimant from responsibility of violation of Rule 807 on June 30, 1941. The said transcript of testimony conclusively establishes that the claimant was guilty of said violation.

2. The action of the carrier in lifting or removing the claimant's suspension from the service did not constitute exoneration of the charge of violation of Rule 807 on June 30, 1941.

Because of the seriousness of the offense the claimant was guilty of on June 30, 1941, as previously established, the carrier would have been justified in dismissing him from the service. After due consideration the carrier decided that his suspension from the service from July 2, without pay would serve to impress upon him the seriousness of his offense to the extent that he would not again be guilty of such offense and on this basis decided to take no disciplinary action. At the time the carrier made this determination it was aware that the claimant's position was to be abolished on July 19, 1941, and in order to lift his suspension and provide for his return to the service, advised him by letter dated July 17 (see paragraph 6 of the foregoing statement of facts) that his position of steno-clerk was abolished effective July 19th, and that he could thereafter exercise displacement under Rule 41 of the current agreement.

The carrier did not by any means intend that its letter of July 17th should be construed as an exoneration of the charges of violating Rule 807 on June 30, 1941. It merely intended by said letter to advise the claimant of the lifting of his suspension from the service.

Furthermore, nothing contained in said letter can be construed as an exoneration of said charge.

3. The carrier's action in not paying the claimant for the period he was out of service from July 2 to 19, 1941, was proper.

As previously stated, the carrier would have been justified in dismissing the claimant from the service for his offense on June 30, 1941. The carrier was more than lenient when it decided to return him to the service without pay for the period he was out of service due to being suspended. In penalizing the claimant to this extent, the carrier was merely attempting to impress upon the claimant the seriousness of the offense he was guilty of in order to preclude a recurrence of said offense by the claimant.

Rule 52 (quoted supra) relied upon by the petitioner, is in no way applicable to the claim in this docket for the reason that as previously established, the charge against the claimant, namely, violation of rule 807 was sustained; therefore, there is no agreement basis for a claim for payment to the claimant of net wage loss incurred as a result of his suspension.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without merit and therefore respectfully submits that it should be denied.

OPINION OF BOARD: Claimant was removed from service July 2, 1941, pending an investigation of a charge of alleged violation of Rule 807, of the Rules and Regulations of the Transportation Department, which provides that the affairs of the company must not be divulged without proper authorization. Investigation and hearing of the charge was had on July 11, 1941. Rule 46, relating to Discipline and Grievances, provides that:

"A decision will be rendered within ten (10) days after the completion of investigation."

No decision has ever been rendered. Instead, the carrier notified claimant that the position he had held would be abolished as of July 19th; and advised that "thereafter you should be guided by Rule 41 of the applicable agreement." (Rule 41 provides that an employe whose position is abolished may, within five days, displace a junior employe.) On July 21st Claimant returned to service by exercising that right.

That the carrier violated Rule 46 in not rendering a decision within ten days after the investigation of July 11th is not open to dispute. Nor is it to be doubted that its failure to render a decision was **not** inadvertent. It comes here asking us to excuse and justify its course on the theory that, in the light of the evidence taken at the investigation, the accused was guilty anyhow. Since the carrier rendered no decision on that evidence we do not think the evidence is properly before us for review. In any event, since the carrier (with deliberation, in our opinion) declined to assume the responsibility of rendering a decision sustaining the charge we do not feel called upon to assume the responsibility for it.

The carrier's failure to render a decision amounted to an exoneration of the claimant on the charge preferred. Under Rule 52 of the agreement he is entitled to compensation during the period he was separated from this position—July 2nd to 19th.

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 employes involved in this dispute are respectively carrier and employes 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 the carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.