

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**BERRYMAN HENWOOD, TRUSTEE,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS, DEBTOR**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, St. Louis Southwestern Railway Company of Texas (1) that the unilateral action of the carrier in reinstating M. E. Bandy September 2, 1941, with a seniority date as of July 19, 1928, on the telegraphers' seniority roster of the Texas Division, which is the same date he held prior to his dismissal from the service January 7, 1941, violated the rules of the Telegraphers' Agreement; (2) that Mr. M. E. Bandy's seniority date should be as of the date his pay started subsequent to the date he reentered the service, September 2, 1941, in accordance with Article 18-2; and (3) that all employees who have suffered financial loss as a result of exercise by Mr. Bandy since September 2, 1941, of seniority ante-dating September 2, 1941, shall be reimbursed for such loss.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of December 1, 1934, as to rules of working conditions, and December 1, 1941, as to rates of pay, is in effect between the parties to this dispute.

Telegrapher M. E. Bandy, employed by the carrier under the telegraphers' agreement with seniority rating as July 19, 1928, on the Texas Division, was dismissed from the service January 9, 1941, for cause by the Assistant Superintendent of the Texas Division. This dismissal was accepted in writing by the General Chairman on January 15, 1941, as final, from which no appeal was taken.

On September 2, 1941, the Superintendent of the Texas Division, without conference and agreement with the General Chairman, but by unilateral action of his own, reinstated the said M. E. Bandy to the service on a leniency basis with seniority rights restored to July 19, 1928, without pay for time lost, and placed him on the extra board.

The governing rules of the telegraphers' agreement are:

"Discipline and Grievances

"27-2. 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 five (5) days of the date of the advice of discipline, and the hearing shall be granted within five (5) days thereafter.

"27-3. A decision will be rendered within seven (7) days after completion of hearing. If an appeal is taken it must be filed with the next higher official and a copy furnished the official whose decision is

Neither of those cases were comparable with the instant case.

Article 18-2 cited by the Employes as fixing the seniority date of Telegrapher Bandy upon his return to service, is a general rule providing when an employe's seniority shall start and the district it shall cover. That rule does not apply in the present case, which is specifically covered by Article 18-7.

In the present case Telegrapher Bandy returned to service under the provisions of Article 18-7. He had handled his case with the proper officers of the Carrier as contemplated by that rule, in the same manner and under the same conditions that other telegraphers have handled their requests as individuals; and retained his original seniority date in accordance with the rule, just as they retained their original seniority dates.

The rules contain no provision requiring that a telegrapher handle his case through the Committee, or that the approval of the Committee is necessary in order that he may retain his original seniority date. Instead Article 18-7 provides simply that if he is re-employed within six months after dismissal (or within time limits extended under the rule) he will retain his seniority. The interpretation requested by the Employes would change the rule to provide that if a telegrapher is re-employed within six months after dismissal (or within time limits extended under the rule) he will retain his seniority if approved by the Committee. The Carrier contends that such an interpretation is not justified, and respectfully requests that the claim of the Employes be denied.

OPINION OF BOARD: On January 9, 1941, M. E. Bandy, a telegrapher with seniority dating from July 19, 1928, was dismissed from service by the carrier for absenting himself from his tour of duty without permission. Bandy did not appeal and his organization accepted his dismissal as final. More than six months after Bandy's dismissal the carrier reinstated him to the extra board with seniority unimpaired. The question here is whether the carrier's action conformed to the effective Agreement of December 1, 1934, insofar as the restoration of Bandy's seniority is concerned.

Rule 18-2 provides that "seniority shall begin at the time when and where the employe's pay starts," and Rule 18-7 is as follows:

"Employes covered by this agreement who are dismissed and re-employed within six months will retain their seniority, but if six months has elapsed after dismissal and before re-employment they will rank as new men; if the case is under consideration between officers of these Companies and the individual or the committee at the expiration of the six months' period, time limit shall be extended to cover such cases."

The meaning of the first part of Rule 18-7 is clear, but the last clause thereof is troublesome. Do the words, "the case," as used therein, refer to the proceeding that ultimately results in dismissal, or to a subsequent application for re-employment? The petitioner contends for the former construction and the carrier for the latter.

If the purpose of the rule is to suspend the running of the six months limitation, within which the carrier may restore the discharged employe to his seniority by re-employing him, in the event the finality of the dismissal is put in issue by an appeal to a higher officer or to this Board, the rule means one thing. On the other hand, if it was intended that when an employe makes application for re-employment within six months after his discharge, the time within which the employer may restore him to his seniority by re-employment is automatically extended so long as said application is under consideration, we would have an entirely different result. Under the construction last suggested it would be within the power of the carrier to keep open indefinitely the question as to whether seniority was to be restored. We cannot believe that the parties to the Agreement intended any such result. Sen-

iority, under a labor contract, constitutes a valuable property right, in the preservation of which every person on the roster has a direct interest. Such rights ought, so far as practicable, to be definitely certain and ascertainable. We therefore adopt that construction of Rule 18-7 which is best calculated to accomplish the evident purpose of the parties, and hold that the carrier's power to restore Mr. Bandy to his former seniority expired at the end of six months after his dismissal became final.

We are not impressed with the showing made on behalf of the carrier to the effect that it and the organization had given the rule a different meaning by past practices. The rule recognizes the right of the carrier to deal directly with its individual employees with respect to the subject matter thereof. Such practices could not, however, constitute precedents as to the meaning of the rule which would be binding upon other employees in no wise parties thereto.

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 employee involved in this dispute are respectively carrier and employee 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 Rule 18-7 of the agreement as indicated in Opinion.

AWARD

Claim sustained for the reasons stated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1944.