

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY
(Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Union Pacific Railroad, Western Lines:

1. That the Carrier acted in a capricious and arbitrary manner, when, on December 24, 1944, after an unfair and biased investigation conducted by the Carrier, it dismissed A. L. Petty, joint railway-express agent-telegrapher at Delta, Utah, from its service on the alleged ground of violating Transportation Rules 901, 911 and 933 and Accounting Department Rules 831-D, 763 and 766; and

2. That as the alleged violation of these rules of the Carrier were not proved, agent Petty shall be reinstated in the service with seniority unimpaired and restored to his former position of joint railway-express agent at Delta, Utah, and be compensated in the amount he would have earned, including express commissions, had he not been unjustly dismissed, less what he may have earned elsewhere during the period involved.

OPINION OF BOARD: After investigation and hearing Claimant was dismissed from service. He seeks reinstatement to his former position of Joint Railway-Express Agent-Telegrapher at Delta, Utah, where he had been in charge for some 3½ years.

Claimant asserts the investigation conducted by Carrier was biased and unfair. We have examined the record carefully and find no basis for such charge. Upon the Travelling Auditor's discovery of money shortages in the Delta Agency accounts Claimant was immediately given notice an investigation and hearing would be held. While the first notice to Claimant was in somewhat general terms referring to the money shortage and to the rules as a whole, a second notice was more specific.

At the hearing Claimant was again advised that the investigation was in connection with the shortage in the Agency accounts and was advised in detail of the precise rules involved. No protest or even dissatisfaction was then indicated by Claimant or by his Representative about the propriety of the notice. At the close of the hearing Claimant, when asked, had no criticism to make, and his Representative found fault only with the fact that Carrier's officials did not appear to be impressed with Claimant's defense.

Claimant openly admitted his failure to obey the Transportation and Accounting Department rules which resulted in his dismissal, but attempted to justify his disobedience on the grounds there was too much work, too little help, and too little time allowed for doing the work. In view of

Claimant's seeming confession and avoidance it becomes unnecessary for us to review the evidence at length. We need only consider Claimant's excuse for failing to obey the rules.

It appears that Claimant was under almost constant criticism by Carrier for his handling of the agency at Delta. At intervals various officials of Carrier checked the station and made recommendations for improvement which Claimant apparently ignored.

The trouble appears to have arisen from the fact Claimant neglected Carrier's business in devoting himself to the express business. He testified he spent only one-half of his time, or four hours a day, on the express business, while Carrier's check reveals the express business would ordinarily require six and one-half hours a day. Claimant may not justify giving his first attention to the express business on the ground that Carrier, through intercorporate control, was ultimately interested in the financial success of the Express Company. Carrier and the Express Company were operated as separate corporate entities. Furthermore by Transportation Rule 933 it is expressly provided:

"Agents must, when authorized to act as agents of any express or other company, give preference to the railroad interests."

It was Claimant's duty to obey this rule.

Moreover the obligation and duties flowing between Carrier, the primary employer, and an employee are mutual, and an employee may not neglect the Carrier's interest for the benefit of the Express Company, even though the work for the Express Company has been held to be part of the "railroad business". See Awards 211, 2603.

The record convinces us the investigation was fair and impartial and on his own testimony, Claimant was guilty of the charge.

The record does not disclose mitigating circumstances which would justify our modifying the severe penalty of dismissal. See discussion in Award 2863. To the contrary we find Claimant had been dismissed once before on January 22, 1943, but on requests for leniency was reinstated on February 13, 1943.

In determining the extent of the discipline it is proper for Carrier to take into consideration the past record of an employee. Award 3427.

We are satisfied that Claimant had a fair and impartial hearing, and although the punishment is severe, Carrier was justified in dismissing Claimant.

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 Employees involved in this dispute are respectively carrier and employees 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 record discloses no ground on which to disturb Carrier's action.

AWARD

Claim (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of April, 1947.