

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

(Berryman Henwood, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Company, that W. M. Bates, regularly assigned agent-telegrapher at Fisher, Arkansas, who was arbitrarily removed from that position by the Carrier on October 31, 1946, in violation of Article 12-2 of the telegraphers' agreement, and prohibited from occupying or exercising his seniority under said agreement upon any position requiring the incumbent to furnish bond, until January 27, 1947, when he was returned to his regular position at Fisher, shall be reimbursed as follows:

(a) For each day lost as a result of being deprived of his position Mr. Bates shall be paid at the rate of pay applicable to the Fisher agent-telegrapher position.

(b) Because of being deprived of his position and being forced to leave his home station to work non-bonded positions, he shall be compensated at the rate of time and one-half of the position actually worked each day, October 31, 1946, to January 27, 1947, and paid actual necessary expenses on those days in accordance with Article 16 of the telegraphers' agreement.

EMPLOYEES' STATEMENT OF CLAIM: An agreement between the parties, bearing effective date of December 1, 1934, is in effect. Several rules have been modified and rates of pay have been increased subsequent to the date of the agreement.

W. M. Bates entered the service of the carrier under the telegraphers' agreement on July 13, 1942, at which time he made formal application for employment and made application for bond, both of which were subject to Article 12-2 of the telegraphers' agreement, which article reads as follows:

"12-2 Employees covered by this agreement will not be dismissed after sixty (60) days on account of rejection of application unless application has been falsified."

Bates' application for employment and his application for bond, made at the time he entered the service of the carrier July 13, 1942, were accepted within the 60-day period as provided for in the above quoted rule, and he worked positions covered by the Telegraphers' Agreement requiring bond, from the time he entered the service July 13, 1942, until October 30, 1946, better than 4 years and 3 months, subsequent to the date his application for

OPINION OF BOARD: The claimant entered Carrier's service July 13, 1942. On October 30, 1946, he was working as the regularly assigned Agent-Telegrapher at Fisher, Arkansas. In his position a bond was required.

On October 30, 1946, F. W. Ferguson, Superintendent, wrote the claimant a letter saying:

"I have received information that the Fidelity and Deposit company of Maryland has cancelled your bond, effective this date..

Under the circumstances, it will be necessary to relieve you as agent with this Railway Company.

Mrs. Schrader will be on hand Thursday morning, October 31, to assume duties of agent."

The claimant was granted a hearing on his complaint that he considered "himself unjustly treated."

In the hearing it was developed that claimant's service with the Carrier was entirely satisfactory. In the appeal of the Employee the claimant testified that he had not been dismissed from the service of the Carrier but had only been disqualified from working the agent's position at Fisher on account of his bond having been cancelled.

When claimant was taken out of his position at Fisher, he reverted to the extra board and later he was assigned to work as Clerk-Telegrapher at Waldo, Ark., where he worked until December 20, 1946, when he was assigned to the position of Clerk-Telegrapher at Blytheville, Arkansas. He worked this position until he returned to Fisher as Agent-Telegrapher, January 31, 1947.

On January 13, 1947, the bonding company notified the Carrier by letter as follows:

"We wish to advise you that we are hereby withdrawing our notice of cancellation dated September 23, 1946, effective October 30, 1946, in regard to Mr. William Martin Bates, and the bond, therefore, continues in force as though the cancellation notice had not been served."

We thus have disclosed the fact that the Carrier received the notice of the cancellation of the bond more than a month before it transmitted the information to the claimant.

In view of later developments it would seem clear that had the Carrier promptly notified the claimant, who had then been giving satisfactory service to the Carrier for more than four years, the entire matter could have been cleared up without claimant having been relieved of his position at Fisher.

We are of the opinion that claimant's being relieved of his position at Fisher under the circumstances constituted "unjust treatment" of the claimant and that a "fair and impartial hearing" as provided by Article 27-2 would necessarily have resulted in such a decision. Here the Carrier was trying a complaint against itself, not against the employee.

Since claimant was not given such a fair and impartial hearing he should be now treated as if he had been regularly assigned Agent-Telegrapher at Fisher from October 31, 1946, to January 17, 1947, when the Carrier by wire notified the Organization that claimant could return to Fisher Agency "without prejudice to position of either party as to controversy period October 31, 1946, to date."

If we consider claimant as having been regularly assigned to the Fisher position during said period he should be paid at the Fisher position rate for the time he was not permitted to work during said period and should be paid for time worked at other stations pursuant to the provisions of the first

paragraph of the amended Article 16 as set out in letter of K. M. Post, General Superintendent, dated November 25, 1944.

Since claimant was not dismissed from the service of the Carrier, Article 12-2 is not applicable.

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 treated claimant unjustly in relieving him from his regularly assigned position at Fisher and did not afford him a fair and impartial hearing on his complaint or unjust treatment; and that claim (a) and (b) should be sustained pursuant to opinion.

AWARD

Claim (a) sustained. Claim (b) sustained for days worked in period October 31, 1946 to January 17, 1947, both dates inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1947.