

Award No. 3874

Docket No. TE-3762

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE CHICAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers Chicago, Rock Island and Pacific Railway Company that P. C. Jeffress be restored to his position as relief employe regularly assigned at Irving-Cadiz Streets and be compensated for all time lost because of removal therefrom by the Carrier.

**OPINION OF BOARD:** The dates requiring primary consideration here are October 19 to 26, 1946, inclusive. P. C. Jeffress, on whose behalf the claim here was made was during that period assigned as relief telegrapher at Irving, Texas, and Cady Street (Dallas) Texas. He relieved at each of these points three days weekly. The three positions relieved at Irving, Texas were joint CRI&P and SL-SF. By agreement of the two carriers the Chicago, Rock Island and Pacific Railway was the employing carrier.

On October 26, 1946, after having occupied the position at Irving on October 19, 21 and 26, 1946, Jeffress was notified of suspension pending investigation. The stated ground of suspension was "failure to properly handle Frisco train order No. 16 of Oct. 26th and apparent inability to perform duties of telegrapher Irving."

An investigation was had November 1, 1946, as a result of which Jeffress was on November 5, 1946 barred from service at Irving. He was notified as follows:

"Effective this date, you are barred from any service at Irving, Texas, on account violation Frisco Rule 209-A on October 26th, 1946.

You may assert your seniority elsewhere, wherever you are entitled to do so under Telegraphers' Agreement."

From this date to December 12, 1946 there is nothing to show that Jeffress performed any service for the Carrier. On December 12, 1946, he was informed by letter that he had absented himself from work without permission when his services were needed since November 5, 1946. In the same letter he was notified to return to work at once and furnish an acceptable explanation for his absence, or submit resignation in writing, or

investigation to show cause why his record and seniority with the Carrier to appear at Fort Worth on December 16, 1946 at 10:00 A. M. for formal should not be closed. He was informed that failure to comply with instructions would result in termination of his record and seniority.

Apparently no investigation was ever had regarding termination of record and seniority. On December 18, 1946 Jeffress wrote the Superintendent in which he expressed the desire to place himself on the Extra Board. Thereafter the record of service is indistinct. The last thing shown by the Docket in this respect is that he returned to work June 10, 1947.

It is to be observed from this brief statement that the discipline complained of did not consist of dismissal from service or reduction in seniority, but suspension from October 26, 1946 to November 5, 1946, inclusive, and removal from the assignment at Irving, Texas as of November 5, 1946.

As pointed out the basis of the disciplinary action was claimed failure to properly handle Frisco train order No. 16 and apparent inability to perform duties of a telegrapher at Irving, Texas.

The train order came from a St. Louis-San Francisco dispatcher. There is little if any, dispute that it had improper handling. The order was recopied after receipt, contrary to the rules of the St. Louis-San Francisco. Also Jeffress had difficulty in taking it in the first instance. The statements of both Jeffress and the dispatcher with reference to the matter appear in the record.

Jeffress blamed the difficulty in taking on the dispatcher. He said it was given too fast and that was the reason for the recopy, which recopy he checked with the dispatcher. It was approved. The recopy was the same as the original. He did not complain to the dispatcher of speed but did break in.

The dispatcher denied unusual speed in sending. He described the handling as follows:

"Order No. 16 was addressed to 1st and 2/33 at Celina addressed to 1024 North at Irving and the body of the order read Extra 1024 North has right over 1st and 2/33 Engines 1039, 1028 Irving to Prosper wait at Gribble until 9:55 A. M. North Carrollton 10:05 A. M. Hebron 10:15 A. M. Frisco 10:30 A. M. for 1st and 2/33. Signed R. H. Celina repeated Order No. 16 which was Q'd by Operator at Irving at which time order was completed at Celina. Operator Irving then began repeating order No. 16. He did okay until he got down to Gribble at which point said Gribble until 9:55 for. I broke him, asked him if he didn't have North Carrollton in order, said 'yes', then repeated North Carrollton 10:05 A. M. Then left Hebron wait out entirely. Asked him if he didn't have Hebron wait. Said 'yes'. Then repeated, Hebron 10:15 A. M. Made the Frisco wait 10:31 A. M. Told him Frisco wait should be 10:30 A. M. Said Okay. Then repeated it 10:30 A. M. When got through asked him if was sure had order okay. Said yes. About three or four minutes later he came in and said would like to repeat order 16 again, which I let him do. Repeated okay this time."

Apparently this last repeat was of the order as recopied. There were apparently three errors in the first repeat.

Was the Carrier with the knowledge of the mishandling of train order No. 16, together with difficulty in its handling as described by the dispatcher, and the knowledge of previous train order mishandling warranted in its conclusion that Jeffress was unable to perform the duties of telegrapher at Irving, and in removing him from that assignment?

With regard to the matter of previous train order mishandling it should be said that Jeffress may not under the handling of the present incident be penalized for the other incident but the Carrier ought not to be denied the right to take the facts and circumstances disclosed there into consideration

in determining here his fitness and ability to handle train orders at the point in question here.

As has been held many times by this Division, it is not the function of the Board in such cases as this to do more than to ascertain whether or not the judgment exercised and action taken by the Carrier was sustained by substantial evidence, and whether or not it acted arbitrarily or capriciously or without regard for the fundamental rights of the employee. See early Award 71 and late Award 3411.

We think that in the present instance the Carrier acted on substantial evidence and that it did not act arbitrarily or capriciously or without regard for the fundamental rights of this employee.

**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 claim has not been sustained.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1948.