

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that The Ogden Union Railway and Depot Company and/or its Officers, after being duly and properly notified by Mr. L. B. Mussleman, Chief Crew Dispatcher, before 4:00 P. M., May 14, 1947, that he was ill and unable to report for work, arbitrarily and capriciously imposed the penalty of dismissal upon Mr. Musselman, withholding him from the service of the Company from May 20, 1947 until June 17, 1947, on which latter date they reinstated him to his position without prejudice to this time claim, which penalty was unreasonable, unjustified and wholly unwarranted; and

The Ogden Union Railway and Depot Company shall now compensate Mr. L. B. Mussleman for full wage loss suffered as a result of such dismissal.

OPINION OF BOARD: On May 14, 1947, L. B. Mussleman, was the holder of a regular assignment as Chief Crew Dispatcher at Ogden with assigned hours 4 P. M. to Midnight. The duties of his position required the call of Trainmen for freight and passenger service, the rendering of assistance in supervising the handling of Yard men and Yard Engineers and the close checking of the movement of train crews into the Ogden Terminal so that they would be ready and available for proper use in road service.

Mussleman had been off duty on such leave but prior to the date mentioned he had announced ready for work and it clearly appears from the record both he and the Carrier regarded his leave as having been terminated and that he was due for service on such date.

About 2 P. M. on May 14th Mussleman, who had been in the Carrier's service for approximately 20 years and who was still suffering from disability resulting from serving his country in World War II, contacted the Carrier's Assistant Chief Clerk at its Yard Office. What happened during that conversation and in a subsequent one had with Mussleman's sister, since it is not controverted or denied, can best be told by quoting a statement made by such clerk at a subsequent investigation. That statement reads:

"Some time after 2 P. M., Mr. Mussleman called me and asked to be layed off the 4 P. M. shift. I told him I did not have any extra men available to rearrange so as to fill his position. He told me he was sick and did not feel so good, and he wanted to get off. I told him he had been off for some time and had OK'd for work and that Mr. Hobson had instructed me to tell him to be sure to come to work

today. He told me that if that was the case, he would come down and get an order for the Dr. and he would be layed off after he got down here. Some time after 3 P.M., his sister called and tried to lay him off. I, also, told her that I did not have anyone to fill the position and that he had OK'd for work and I couldn't lay him off. She said she would talk to Bus and call later, but never did. I didn't lay him off to either him or his sister, and I figured he would be here at 4 P.M."

It is not contended or even argued that either Mussleman or his sister called the Carrier's Yard Office after the occurrence of the conversation above related or took any further action with respect to his assignment until after his regular tour of duty on the day in question had commenced and the Carrier had been compelled to call another employe who filled his position at the overtime rate. Even then Mussleman did not call the yard office to inquire whether his position had been filled until after two of the Carrier's special agents, who had been sent out for investigation purposes, called at the house where he was living and found him at work mowing grass in the yard.

Both Brotherhood and Carrier treat this case as if the basic facts and principles on which it must be decided are the same as those involved in Awards Nos. 4106 and 4107, this day rendered, and their contentions with respect to the issues here involved are the same as those there advanced.

We are not too sure from the instant record this case could be decided upon the premise the reasons assigned by this employe for laying off were fictitious or feigned and that hence failure to fill his regular assignment under those conditions alone resulted in failing to protect it. But we need not labor that point or decide it.

The claimant in the instant case was given a hearing and dismissed from the Carrier's service for failing to protect his assignment as Chief Crew Dispatcher. Later, and on June 17, 1947, he was reinstated. The undisputed facts on which he now seeks a reversal of the Carrier's action and compensation for lost pay are that he, as well as his sister, agreed with the Carrier's authorized representative to get in touch with the Carrier again before his tour of duty commenced at 4 P.M. on May 14, that he failed to do so without offering any reasonable excuse for his neglect to do so, and that without notifying the Carrier or having it notified he simply failed to show up and left it to the Carrier to protect his assignment the best it could under the circumstances.

No useful purpose will result from laboring the record evidence further. We hold that under the foregoing conditions and circumstances Mussleman, who was an employe holding a position immediately connected with the progressive handling of train movements, was obliged to have communicated further with the Carrier about filling his position on the date in question and that in not doing so he failed to protect his assignment and thereby subjected himself to disciplinary action at the hands of his employer.

Other contentions advanced by the petitioner with respect to sufficiency of the instant charge, arbitrary and capricious conduct on the part of the Carrier, motive and purpose in the institution of disciplinary action, severity of the punishment imposed, and Claims dealing with purported violations of rules of the current Agreement are the same as those involved in Awards 4106 and 4107, supra, to which we adhere, and are decided against petitioner on the basis of what is there said and held.

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

The record does not justify an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of September, 1948.