

Award No. 5015
Docket No. TE-4954

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas; that

- (1) the Carrier arbitrarily and capriciously disciplined L. L. Langowski, first trick telegrapher-towerman, San Antonio, Texas, tower with five days' actual suspension for alleged participation in a quarrel and altercation in his tower created by Signal Maintainer John Knott on February 2, 1949, which charges were not proved; and
- (2) the discipline by actual suspension assessed upon Langowski shall be erased from his record, and that he shall be paid for the five days he was forced to lose as a result of the physical attack upon him by Signal Maintainer John Knott.

OPINION OF BOARD: This is a discipline case wherein the issues raised by the parties require a somewhat extended statement of the facts on which the claimant was suspended from the service of the Carrier for a period of five days.

On February 2, 1949, claimant, L. L. Langowski, a first trick Telegrapher, and John Knott, a Signal Maintainer, engaged in an argument and affray on the premises of the Carrier at a time when both were on duty.

During the altercation, the details of which will presently be given more attention, claimant was hit over the head with a poker by Knott and so seriously injured that he lost five days' time. Following its occurrence the claimant was served with a formal notice which reads:

"Arrange to report MKT freight station, 9:00 A.M., February 7, 1949, for investigation to develop the facts and responsibility regarding altercation at WD Tower, San Antonio, about 11:00 A.M., February 2, 1949. You will arrange for representative and any witnesses. File 259-D."

Pursuant to requirements of the foregoing notice claimant, accompanied by his representative, General Chairman Thompson of the Organization, appeared at the time and place therein stated. There they found Knott, who had been served with a similar notice, with his representative, and Officials of the Carrier.

At the commencement of the investigation one of the officials made the following statement:

"Mr. John Knott and Mr. L. L. Langowski are charged with violation of Fourth Paragraph, General Notice Rule reading in part as follows:

"The service demands the courteous discharge of duty.' Rule 402B in part: 'Employees who are careless of the safety of themselves or others or quarrelsome will not be retained in the service.' Rule 4020: 'Civil, gentlemanly deportment is required of all employees in their dealings with patrons, the public, their subordinates, and each other. Employees must not enter into an altercation with any person, but will report the facts to their supervising officer.'"

Immediately following such statement claimant and Knott were asked whether (1) they had received proper notice of the investigation; (2) they had representatives present; (3) all witnesses desired were present; and (4) they were ready to proceed with the investigation, to which questions each gave affirmative answers. Shortly thereafter, at the request of claimant's representative, the investigation was recessed until February 9. On that day evidence was adduced and both parties to the affray were found guilty of violating paragraph 402C of the rule heretofore quoted. Two days later claimant was notified of his five-day suspension. Knott was also advised that he had been suspended for a period of ten days.

The first contention advanced by the Organization is that the notice of the investigation was so indefinite it failed to advise Langowski he was required to appear at the hearing as a principal. We doubt if it is subject to that construction. Even so, under the facts and circumstances of this case, it cannot be held the claimed defect in the notice resulted to his prejudice or deprived him of a fair hearing. He was fully advised of the charge at the start of the trial and then, on his own request, the investigation was recessed for several days. That gave him ample time in which to get his witnesses together and make his defense. Moreover the instant contract contains no requirement, as some do, that an employee under investigation shall be notified in writing of the precise charge on which he is to have a hearing.

The Organization's principal contention is based upon the premise that under all the existing conditions the Carrier's action in suspending Langowski was arbitrary and unfair, hence any penalty that might have been assessed against him would have constituted an abuse of its discretion. At the outset it must be conceded that under our decisions, if the record discloses that to be the situation, a sustaining Award would be in order. However, after a careful review of the evidence we have decided it does not warrant such a conclusion. There can be no question but what the involved employees were quarreling for some time before Knott entered the tower and committed the assault. Their conversation was carried on in above the average tone of voice. Langowski himself admitted that. He likewise admitted that he was the one who took the poker off the hook on the wall and held it in his hand for a time. Another Telegrapher, Childress, who was a disinterested spectator, stated the parties exchanged hot words, including the use of profanity. Knott testified to the same effect. In that situation, even though it is true that Knott was the aggressor after entering the tower and that Langowski received much the worst of it in the fight which followed the preliminary quarrel, it seems clear there was such a violation of Section 402C of the rule heretofore quoted as to justify the Carrier in disciplining both parties. Nor does it appear the penalty imposed for the violation was so excessive as to show abuse of discretion, particularly in the face of a record which discloses it was made to apply against the five days claimant was actually off work as a result of the injuries received by him in the altercation. Our examination of the current Agreement fails to reveal anything that would require the Carrier to pay Langowski for time not worked under those conditions anyway.

It is suggested Knott's offense was far greater than Langowski's and that on that account the discipline imposed was out of proportion. We are

inclined to agree. The trouble is that fact is not decisive of the issue here involved. All we have before us is the question whether the claimant's discipline was arbitrarily imposed or so severe as to constitute abuse of discretion. That, as we have indicated, does not appear from the record.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 violation of the Agreement.

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 August, 1950.