

Award No. 5538

Docket No. TE-5533

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad:

(1) That the carrier arbitrarily and capriciously dismissed C. F. Stuckey, Agent-Telegrapher, Wauchula, Florida, on June 20, 1950, for alleged violation of the Hours of Service Law Rule 922 and Circular No. 44, on June 3, 1950, also for alleged mishandling of a telegram on May 13, 1950, and

(2) That the record of C. F. Stuckey shall be cleared of the charges, and that he shall be returned to his former position of Agent-Telegrapher at Wauchula, Florida, with seniority and pass rights unimpaired and paid for all time lost, including express commissions since unjustly dismissed.

OPINION OF BOARD: On the days here involved, claimant was assigned as supervisory agent at Wauchula, Florida, with an assignment of Monday through Friday, 8:30 A.M. to 4:30 P.M., and to protect all service on Saturday. He was dismissed from the service after investigation on two charges: (1) The mishandling of a telegram on May 13, 1950, and (2) alleged violation of the Hours of Service Law, Rule 922 and Circular No. 44 on June 3, 1950.

The record shows that claimant was occupying a position which was subject to the Hours of Service Law. He was advised by the Carrier that he was not permitted under this law to work more than nine hours in any 24 hour day. It is shown by the record that employes of this class generally understood that work in excess of nine hours in any 24 hour period was prohibited and constituted a violation of the Hours of Service Law. Claimant admits that he had been directed not work in excess of nine hours in any 24 hour period but denies that he knew that it was a violation of the Hours of Service Law.

Serious penalties are imposed upon carriers for violating the Hours of Service Law. In this case the Carrier plainly instructed its employes not to exceed the limits prescribed by the law, a fact which claimant admits. The willful violation of these directions subjects the Carrier to prosecution, penalties and great expense. Discipline affords the only protection afforded the Carrier in compelling compliance with the law and its directions issued to insure compliance therewith. That claimant worked in excess of nine hours contrary to directions is established by the record. He filed claims for over-

time in excess of nine hours on at least four occasions. The evidence sustains a finding of guilt on the part of claimant which warrants the imposition of discipline.

In view of our holding on the charge of violation of the Hours of Service Law and Carrier's directions pertaining thereto, we shall not discuss the charge of mishandling of a telegram on May 13, 1950.

The Carrier dismissed claimant from the service for violating the Hours of Service Law and its instructions. The Organization contends that this constitutes excessive punishment. In this regard, it must be noted that violations of this kind can result in grave consequences to the Carrier. Laws are made to be obeyed and penalties are imposed against those who violate them. It is a most serious offense against the Carrier for an employee to knowingly and willfully violate a law that the employer is legally bound to comply with. The Carrier is warranted in imposing severe discipline for its own protection in such a case. Claimant entered the service of this Carrier on April 7, 1926. While long and faithful service is a mitigating circumstance in measuring the discipline to be imposed in the ordinary case, we cannot say that it has any controlling effect here. During his employment with this Carrier claimant has been disciplined 25 times including one previous dismissal from the service. The record shows four commendations, all prior to 1933, for discovering defective equipment on moving trains. Such a service record, considered as a whole, does not justify a reduction of the discipline imposed. The record supports the action of the Carrier.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1951.