

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

---

**PARTIES TO DISPUTE:**

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

**THE TEXAS AND PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(a) Carrier's action in withholding Ed McCullough from service May 2 to July 30, 1952, as Warehouse Laborer in the Ft. Worth, Texas, Warehouse was unreasonable and unjust.

(b) Mr. McCullough's personal record be cleared of the charge that he was guilty of using abusive and disrespectful language to his superior, Mr. D. R. Jeter, Agent, at or about 12:15 P. M., May 2, 1952, and that he be paid for wage loss sustained until reinstated to service on July 30, 1952.

**OPINION OF BOARD:** Claimant McCullough, a stowman employed by Carrier at its Fort Worth, Texas, Warehouse was suspended from service May 2, 1952. On the following day he was charged with:

1. Being absent from the appointed place of his duties without proper authority.
2. Failure to perform his duties.
3. And for using abusive and disrespectful language to his superior, Mr. D. R. Jeter, Agent, about 12:15 P. M., May 2, 1952.

An investigation was held on May 6, 1952 and on May 12, 1952 a decision rendered by Carrier's Superintendent dismissing Claimant, reading in part:

"Evidence produced in this investigation clearly reveals that you are guilty of using abusive and disrespectful language to your superior, Mr. D. R. Jeter, Agent, and you are hereby dismissed from the service of The Texas and Pacific Railway Company."

This dismissal is based on the third charge as set out above. In respect to the two other charges Carrier states in the record, relative to charges 1 and 2:

"Those two counts were not sustained."

On July 30, 1952, the parties entered into an agreement whereby Claimant was reinstated to service with seniority and vacation rights unimpaired, effective as of that date, and the agreement further provided:

“With respect to the Committee’s claim for time lost for the period of Mr. McCullough’s dismissal up until the date of his reinstatement—July 30, 1952—it may be handled further in accordance with the provisions of the Railway Labor Act.”

In reading the evidence taken at the hearing we are inclined to agree with the statement of Carrier that the first two charges were not proven and likewise consider that the conflicting evidence used by Carrier to sustain the third charge is extremely weak.

This claim should be sustained and Claimant paid in accordance with the provisions of Rule 21 (c):

(c) If the final decision decrees that charges against the employe are not sustained, the record shall be cleared of the charges, and if he has been suspended or dismissed, the employe shall be reinstated and paid for all time lost, less amount earned elsewhere during suspension or dismissal.”

**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 Carrier violated the agreement.

#### AWARD

Claims (a) and (b) sustained in accordance with Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1956.