

Award No. 7413
Docket No. CLX-7372

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that

(a) The agreement governing hours of service and working conditions between Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949 was violated at the Dallas, Texas Agency in the treatment accorded Frank Farmer in disqualifying him March 4, 1954 on his position without affording him a hearing as required by the Rules Agreement; and

(b) He shall now be returned to his position and compensated for salary loss sustained retroactive to and including March 4, 1954.

EMPLOYEES' STATEMENT OF FACTS: Frank Farmer is the regular occupant of a seven day position at the Dallas, Texas Agency, titled Relief Air Clerk; his work week Thursday to Monday, inclusive, with Tuesday and Wednesday as days of rest; salary \$309.18 basic per month, with a seniority date October 10, 1941. During this period of employment he had occupied a number of clerical positions including that of Air Clerk, Relief Air Clerk and Revising Clerk. Effective February 21, 1954 position No. 79-12 occupied by Farmer, titled Relief Air Clerk was abolished. Effective same date Farmer displaced junior employe T. R. Malin from position No. 97 titled Relief Clerk. March 3, 1954 General Agent H. I. Stark wrote a letter to Farmer reading in part—

"You will please note under Rule 4 of the Agreement wherein it states fitness and ability being sufficient, seniority shall prevail. Your fitness and ability being insufficient to fulfill the qualifications of the position you are hereby disqualified effective at the end of your tour of duty March 3, 1954." (Exhibit "A")

There was no investigation held prior to this date. The Agent arbitrarily disqualified him. He was not apprised that any such action was being contemplated and was shocked by such action on the part of the Agent.

OPINION OF BOARD: It appears from the record that claimant requested and was afforded the hearing provided by Rule 29 of the Agreement, but complains that he was disqualified and removed from the position to which assigned before the hearing and after working less than the thirty (30) day qualifying period as provided by Rule 8. Removal under such circumstances, in our opinion, was tantamount to a suspension prior to hearing and contrary to the "Note" to Rule 29.

Whether claimant was properly disqualified after hearing is not before us on a claim which, as stated, seemingly embraces only a charge that Carrier violated the Agreement in disqualifying claimant as of March 4, 1954, "without affording him a hearing as required by the Rules Agreement."

Claimant is entitled to be paid in accordance with his claim from March 3 through March 17, 1954, but no further or additional relief is allowable under the claim.

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 Agreement was violated as per opinion.

AWARD

Claim (a) sustained. Claim (b) sustained only for salary loss from March 3 through March 17, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1956.