

Award No. 10037
Docket No. TE-12296

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (Lines West of Buffalo), that:

1. The Carrier's dismissal of Richard M. Mosher, Operator-Leverman, Nasby Tower, Toledo, Ohio, on charges of having violated Carrier's Operating Rule 725, is unwarranted, unreasonable and in abuse of the Carrier's right to discipline.

2. The Carrier Superintendent's failure to render a decision within ten (10) days after the date of the appeal was received by him, violated Rule 32 (e) of the parties' Agreement.

3. The Carrier shall, because of the violations set out above, restore Richard M. Mosher to the Carrier's service in accordance with the provisions of Article 32 (f) of the parties' Agreement.

OPINION OF BOARD: The facts and contentions in this case can easily become confusing because the Claimant is charged with three violations of Operating Rules on the same day. To make each charge readily distinguishable — the Board has sectionalized each charge into a separate category — in the following manner:

Section I: Violation of General Yard Master's instructions;

Section II: Violation of Rule 634;

Section III: Violation of Rule 725.

Section I: All facts and claims set forth below pertain solely to the charge of Claimant's violation of General Yard Master's instructions:

On Sunday, September 27, 1959, Mr. Richard M. Mosher, the Claimant, a telegrapher and a Carrier employe for about sixteen years was charged with failing to comply with General Yard Master's instructions thereby causing a fifteen minute delay to train NY-14, during his tour of duty and while in charge of Nasby Tower Interlocking Station, Toledo, Ohio.

On September 29, 1959, the following letter was addressed to the Claimant:

"Arrange to report to TrainMaster (sic) Foley's office, Air Line Jct. Toledo, Ohio at 9:00 A. M. EST Tuesday October 6, 1959 for a hearing.

You are charged with failure to comply with the General Yard Master's instructions with regards to handling Train NY-14 engines 1746 — at Nasby Tower, Toledo during your tour of duty at Nasby Tower on Sunday September 27, 1959 at about 10:00 A. M.

You may bring representation and/or witnesses if desired without expense to the company.

Please sign the enclosed copy of this letter and return for our files.

/s/ F. G. Stoltz
Rules Examiner

cc: A. J. Wayne
E. R. McGowin
E. D. Foley
W. C. Ayers"

The Claimant and his representative, Mr. W. C. Ayers, Local Chairman ORT, attended the hearing and Claimant testified on his own behalf.

Under date of October 13, 1959, the following letter was directed to the Claimant:

"Result of a hearing scheduled for 9:00 A. M. and held in the Trainmaster's office, Air Line Jct., Toledo, Ohio on October 6, 1959 be advised that a 15 day suspended sentence is being placed on your service record for your failure to comply with the General Yardmaster's instructions during your tour of duty at Nasby Tower, Toledo on September 27, 1959, resulting in delay to Train NY-14.

This makes it necessary that you serve the 20 day suspended sentence (sic) which was placed on your service record on June 12, 1959.

/s/ Fred Stoltz
Rules Examiner

cc: A. J. Wayne
E. R. McGowin
E. D. Foley
W. C. Ayers"

Section II: All facts and claims set forth below pertain solely to the charge of Claimant's violation of Operating Rule 634.

On September 27, 1959, the Claimant was also charged with violation of Operating Rule 634 — for having his wife and their four children at the Nasby Tower without proper permission.

Rule 634 — reads as follows:

"Signalmen must not permit unauthorized persons to enter the interlocking station."

On September 27, 1959, General Yardmaster J. L. Haynes went to Nasby Tower and discovered three of Claimant's children playing around the Tower steps; Mrs. Mosher, Claimant's wife, in the Tower with a baby in her arms; the Claimant, sitting at his desk; and a "box of food and blankets on top of the interlocking machines and a pitcher of kool-aid in the window".

Mr. R. A. Ohle, Trainmaster, came to the Tower shortly after the arrival of Mr. Haynes, and he found four children and Mrs. Mosher in the vicinity of the Tower stairs and the Messrs. Haynes and Mosher in the Tower. The Claimant, according to Mr. Ohle, said "That they were his family, that he had asked them to come with him on this particular day, that the children liked to see the trains, so they packed a picnic lunch and had come to work with him".

Mr. Haynes was concerned about the children playing along the railroad tracks. Mrs. Mosher was unable to drive — so she could not take the children home. Accordingly, the Claimant telephoned Mr. W. N. Clark, Chief Dispatcher, and asked him to have Mr. Earl Nichols, third shift telegrapher, relieve Claimant while he took his family home. The Claimant reportedly stated that he would pay Nichols for relieving him.

Mr. Nichols, when contacted by Mr. Robert Hurst, the Chief Dispatcher's clerk, agreed to relieve the Claimant and arrived at Nasby Tower about noon on September 27, 1959. The Claimant with his wife and children left the Tower around 12:30 P. M. and drove his family to their home at Swanton, a distance of eighteen or nineteen miles. The Claimant did not return to the Tower and Mr. Nichols continued on the job until he was relieved at 3:30 P. M. by second shift telegrapher, Mr. Walter Schuett.

Under date of September 29, 1959, the following letter was directed to the Claimant:

"Mr. R. N. Mosher
126 Sanderson Street
Swanton, Ohio

Arrange to report to TrainMaster (sic) Foley's office, Air Line Jct. Toledo, Ohio at 9:10 A. M. EST Tuesday October 6, 1959 for a hearing.

You are charged with violation of Rule No. 634 of the Rules of the Operating Department of the New York Central Railroad Company during your tour of duty Sunday September 27, 1959 while in charge of Nasby Interlocking Station, Toledo, Ohio.

You may bring representation and/or witnesses if desired without expense to the company.

Please sign the enclosed copy of the above letter and return for our files.

/s/ F. G. Stoltz
Rules Examiner

cc: A. J. Wayne
E. R. McGowin
E. D. Foley
W. C. Ayers"

The Claimant attended the above hearing with his representative, Mr. Ayers, and testified on his own behalf.

On October 13, 1959, the following letter was directed to the Claimant:

"Result of a hearing scheduled for 9:10 A.M. and held in the Trainmaster's office, Air Line Jet., Toledo, Ohio on October 6, 1959 be advised that a 30 day suspended sentence is being placed on your service record for your violation of Rule 634 of the Rules of the Operating Department of the New York Central Railroad Company during your tour of duty at Nasby Tower, Toledo on September 27, 1959.

This makes it necessary that you serve the 15 day suspended sentence which was placed on your service record on October 13, 1959.

/s/ Fred Stoltz
Rules Examiner

cc: A. J. Wayne
E. R. McGowin
E. D. Foley
W. C. Ayers"

Section III: All facts and claims set forth below pertain solely to the charge of Claimant's violation of Operating Rule 725.

Operating Rule 725 reads as follows:

"No employe will be allowed to absent himself from duty without proper authority nor will any employe be allowed to engage a substitute to perform his duties."

The genesis of this claim lies in the Claimant's failure to return to his position at Nasby Tower after taking his family home on September 27, 1959.

Under date of September 29, 1959, the following letter was directed to the Claimant:

"Arrange to report to TrainMaster (sic) Foley's office, Air Line Jet. Toledo, Ohio at 9:20 A.M. EST Tuesday October 6, 1959 for a hearing.

You are charged with violation of Rule No. 725 of the Rules of the Operating Department of the New York Central Railroad Company during your tour of duty on Sunday September 27, 1959 while assigned hours from 7:55 A.M. until 3:55 P.M.

You may bring representation and/or witnesses if desired without expense to the company.

Please sign the enclosed copy of this letter and return for our files.

/s/ F. G. Stoltz
Rules Examiner

cc: A. J. Wayne
E. R. McGowin
E. D. Foley
W. C. Ayers
W. N. Clark
E. E. Nichols"

The Claimant and his representative, Mr. W. C. Ayers, Local Chairman ORT, attended the hearing on October 6, 1959, and the Claimant testified on his own behalf.

Under date of October 14, 1959, the following letter was directed to the Claimant

"Result of a hearing scheduled for 9:20 A.M. and held in the Trainmaster's office, Air Line Jct., Toledo, Ohio on October 6, 1959 be advised that on completion of your tour of duty at Nasby Tower, Toledo on October 15, 1959 you are dismissed from the service of the New York Central Railroad Company for your violation of Rule 725 of the Rules of the Operating Department of the New York Central Railroad Company during your tour of duty at Nasby Tower, Toledo on September 27, 1959.

Please return all company property such as Annual Passes, Books of Rules, Switch Key, etc. as soon as possible.

/s/ Fred Stoltz
Rules Examiner

cc: A. J. Wayne
E. R. McGowin
E. D. Foley
W. C. Ayers"

In keeping with the provision of Rule 32 of the current Agreement, Mr. Ayers appealed the dismissal of the Claimant in the following letter:

"Waterloo, Indiana
October 21, 1959

Mr. A. J. Wayne, Transportation Supt.
New York Central R R Co.
Company Union Terminal
Toledo 4, Ohio

Dear Sir:

Appealing to you for further handling decision of F. G. Stoltz, Rules Examiner, as per his letter of October 14, 1959 to R. M. Mosher dismissing him from service of The New York Central R. R. Co. effective October 15, 1959 account violation of Rule 725 of the Operating Department, during his tour of duty at Nasby Tower, Toledo, Ohio on September 27, 1959.

Please advise.

Yours truly

/s/ W. C. Ayers

CC F. G. Stoltz, R.E.
Toledo, Ohio"

The Organization stated that it did not receive a reply to the above letter within the ten day time limit specified in Rule 32 of the Agreement, and on November 9, 1959, Mr. Ayers directed the following letter to Mr. Wayne:

"Dear Sir:

To date have not received reply to letter of October 21, 1959, relating to R. M. Mosher appeal account dismissed from service of the New York Central Railroad Company.

Yours truly

/s/ W. C. Ayers"

Under date of November 16, 1959, Mr. Wayne replied to Mr. Ayers as follows:

"Referring to your letter of November 9, in which you stated you had not received a reply to your letter of October 21, 1955, concerning the dismissal of R. M. Mosher.

Reply was sent you on October 26, and as I told you in our phone conversation today, we cannot understand why this letter has not been received.

In transcript of Hearing in Trainmaster's (sic) Office, Air Line Jct., Oct. 6, 1959, it was definitely stated that Mr. Mosher left for home at approximately 12:15 or 12:20 P. M., and that he had been relieved by Mr. Nichols. On Page 3, Mr. Mosher stated that he did not notify anyone he would not be back and stated the reason he did not come back was that he had difficulty getting home and therefore would have just as much difficulty in getting back. He also stated that the distance between Nasby and Swanton is about 18 miles and surely you can drive 18 miles to Swanton and return in less than 2½ hours.

Because of Mr. Mosher's failure to return to work we were charged with an ICC violation by having Mr. Nichols work excessive hours. Mr. Mosher asked Mr. Nichols to relieve him long enough to take his family home and he would pay him for his time.

Because of Mr. Mosher's previous record for failing to properly fill his assignment, we cannot agree at this to his reinstatement to the service of the New York Central Railroad.

Yours truly

/s/ A. J. Wayne
Transportation Superintendent"

To the above letter, Mr. Ayers sent the following reply:

"Received your letter dated November 16, 1959 File PP-3315 today regarding your decision concerning R. M. Mosher dismissal.

To date have not received letter you mentioned sending October 26, 1959.

Mr. R. M. Mosher has asked that I appeal this case to General Chairman of O.R.T. for further handling.

Yours truly

/s/ W. C. Ayers"

The matter was then handled on appeal by General Chairman T. M. Hadley, who directed a lengthy letter, dated December 1, 1959, to Mr. C. L. Stalder, Assistant General Manager — Labor Relations, The New York Central Railroad, Cleveland, Ohio, citing in detail all the pertinent facts and claims involved in this case.

On December 28, 1959, Mr. Stalder replied as follows:

"Referring to your letter of Dec. 1, 1959, File 59-32-108, appealing from the decision of Transp. Supt. A. J. Wayne in the case of R. M. Mosher, who was dismissed from the service on completion of tour of duty Oct. 15, 1959.

We discussed this claim in conference on December 22, 1959, at which time you took the position that Local Chairman W. C. Ayers had never received Transp. Supt. Wayne's letter of declination, dated Oct. 26, 1959, which, in your opinion, was in violation of Article 32 (e) of your agreement. I told you in conference that I could not understand why Local Chairman Ayers did not get this letter, as he has had considerable correspondence with Mr. Ayers on other cases, and all letters were addressed the same, and this was the first time they had experienced this difficulty. I also showed you the copy of letter dated Oct. 26, 1959.

You stated, in conference, that you would be willing to give consideration to handling this dispute on its merits if we would be willing to give consideration to returning Mr. Mosher to service after he had been off a reasonable length of time.

We told you that as a matter of record, in order to comply with Article 32 (e), your claim in this docket is declined on the basis of the hearing.

We also told you that without making any commitment (sic) as to whether this man might be returned to service we would be willing to give it further consideration at a later date and advise you.

Yours truly

/s/ C. L. Stalder"

A careful and objective review of the key points in this case reveal the following facts:

- DISCUSSION:**
1. The Claimant readily admitted that he failed to comply with the General Yard Master's instructions — thereby causing a fifteen minute delay to train NY-14;
 2. The Claimant readily admitted that:
 - A. He was familiar with Operating Rule 634;
 - B. He brought his family to work with him;
 - C. He did so without permission;
 - D. He violated Operating Rule 634.
 3. The Claimant denied that he violated Operating Rule 725

However, the Claimant's answers at the investigation fail to support his position as revealed by the following questions and Claimant's answers:

Question: "From the statements that have been given here by the witnesses, did you understand that you were to return to duty after taking your family home?"

Answer: "Yes"

Question: "Did you return?"

Answer: "No."

Question: "Did you comply with Rule 725?"

Answer: "Yes, I had proper authority."

The Claimant maintained that he "called the Chief and got authority", but there is absolutely no supportive evidence to this allegation.

The above excerpt from the record indicates that there is ample evidence to sustain the position of the Carrier that Claimant violated Rule 725.

As for the Organization's charge that the Carrier violated Rule 32 (e) of the Agreement by its failure to render a decision on an appeal within the specified ten day period — all we have is the naked allegation that the Organization failed to receive a letter — which the record shows the Carrier sent within the ten day period.

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

That the parties waived oral hearing:

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 and the Carrier's dismissal of the Claimant was not unwarranted, unreasonable nor in abuse of Carrier's right.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August 1961.