

Award No. 13115

Docket No. TE-14631

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated the terms of an Agreement between the parties hereto when effective July 8, 1963, it dismissed C. W. Tarpley, Agent-Operator, Baxter, Tennessee, from its service and thereafter failed to accord him a fair and impartial hearing and the right of appeal as prescribed by said Agreement.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, reinstate Mr. Tarpley to the agent-operator's position at Baxter, Tennessee, from which he was improperly removed and/or to any other position to which his seniority would entitle him under the rules of the Agreement with a proper adjustment in the rate of pay with seniority rights unimpaired.

3. Carrier shall, in addition to the foregoing, compensate Mr. C. W. Tarpley for eight (8) hours each day, Monday through Friday, at the rate of the agent-operator's position at Baxter, Tennessee (\$2.5008 per hour) commencing July 9, 1963, and so long thereafter that he is held out of service.

OPINION OF BOARD: This is a discipline case. At the outset, let us say that we are fully aware of the presumptions which attach to the Carrier's actions in these matters.

We do not consider it our duty to weigh the evidence presented on the property, and impose our judgment in place of the Carrier's. Rather we feel we should examine the record for the purpose of determining if evidence is present which will substantiate Carrier's position. If such evidence is found, even though it may be contested, we believe we should not overturn the judgment of the Carrier. Of necessity, this process involves an evaluation of the total record and a conclusion as to its contents.

This claim presents three areas of controversy. There are several procedural questions raised, which we do not feel are determinative of any basic issues in the claim or are detrimental to the fundamental rights of either the Carrier or the employees. Secondly there is grave doubt that the Carrier protected Claimant's right to a fair and impartial hearing after the disciplinary action on the property. We find it difficult to understand why the Carrier acted as it did in processing this discipline action, but we do not feel that this

should be the most important point in this case. Even if all matters of procedure had been properly handled, this Board could not ignore the record in this case, and say that there is evidence sufficient to support Carrier's action.

We have given very careful study to the voluminous record before us, and we are unable to discover sufficient evidence to substantiate Carrier's action. There simply is no evidence to sustain the assertion that Tarpley's conduct was in fact detrimental to the Carrier's interest or reputation. We cannot escape the conclusion that Carrier abused its discretion in this case. It must be our considered opinion that the Carrier acted without sufficient evidence or just cause.

There is some doubt as to the veracity of all of the charges made against the Claimant. But even if everything which was charged is true, there is no evidence at all that his actions were detrimental to Carrier's interest. The Carrier is the one who made the charges, and set the rules by which they were to be proven. Having failed to meet its burden, the claim must be sustained.

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 Carrier's discipline was imposed without just cause.

AWARD

Claimant shall be reinstated with seniority rights unimpaired and shall be paid for time lost, less and except the amount of earnings he shall have received from other employment during the interim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1964.