

**Award No. 13682**  
**Docket No. TE-14975**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**William H. Coburn, Referee**

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION**  
**(Formerly The Order of Railroad Telegraphers)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**  
**—COAST LINES—**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway (Coast Lines), that:

1. The Carrier violated the Agreement when it rendered the severe and unwarranted discipline of removal from service against Claimant M. F. Landon on September 1, 1963.

2. Carrier further violated the Agreement on September 11, 1963, when it tried the Claimant in absentia with full knowledge that Claimant Landon was ill and unable to appear to face his accusers.

3. Carrier shall reinstate Claimant Landon to his position in the San Bernardino Relay Office with seniority, vacation and all other rights unimpaired, and

4. Carrier shall pay the Claimant a day's pay at the rate of his regular position beginning September 1, 1963 forward.

**OPINION OF BOARD:** The record in this case, including the transcript of the investigation, has been thoroughly reviewed and the Board finds that Claimant's procedural rights to a fair and impartial trial under the terms of the effective agreement were not violated. There is no merit, therefore, in the Petitioner's allegation that the charge was defective and that the Carrier committed prejudicial error by proceeding with the investigation in Claimant's absence.

The Board is of the opinion, however, that in assessing the discipline of dismissal from service the Carrier failed to give sufficient weight to evidence of probative value that Claimant was so emotionally and mentally disturbed at the time he committed the acts forming the basis of the charge and consequent disciplinary action that a reasonable doubt could fairly have been entertained of his competence to understand what he was saying and doing at that time. Failure by the Carrier to give full consideration to this evidence in assessing the discipline to be imposed must result in a finding by the Board

that dismissal from service, under the circumstances here prevailing, was excessive punishment. We so find.

Accordingly, the Board directs the Carrier to reinstate Claimant to his former position with seniority and all other contractual rights unimpaired, provided Claimant submits medical evidence satisfactory to the Carrier establishing that he is physically and mentally able to perform the duties thereof. Paragraph 4 of the claim is denied.

**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 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 claim will be disposed of in accordance with Opinion.

#### **AWARD**

Claim disposed of in accordance with Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1965.