



Award No. 14357

Docket No. TE-15442

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines) that:

1. Carrier improperly dismissed telegrapher G. C. Carey from service.
2. Carrier shall be required to reinstate telegrapher G. C. Carey with all rights unimpaired and pay for all time lost beginning June 5, 1964.

OPINION OF BOARD: The Claimant entered Carrier's service on August 19, 1960 as a telegrapher on its former Coast Division and was an "extra" employe on June 3, 1964 when he was suspended from service.

The essential facts involved in this dispute are not in issue. On June 1, 1964, Claimant was scheduled for duty at King City at 11:00 P. M. Claimant's wife telephoned the telegrapher on duty at San Jose, California at 8:30 P. M. and requested him to notify the Chief Dispatcher at San Francisco that Claimant would not be able to protect his assignment at King City that evening because of car trouble. This message was also sent through the telegrapher on duty at King City and both messages were ultimately relayed to the Assistant Chief Dispatcher before 9:00 P. M. that evening. At approximately the same time, the regular occupant of the third trick at San Francisco notified the Assistant Chief Dispatcher that he also had encountered car difficulties and would be unable to protect his position that evening. The regular San Francisco telegrapher was then assigned to the third trick at King City in place of the Claimant. At approximately 10:05 P. M., the Assistant Chief Dispatcher contacted the Claimant by telephone and instructed him to report for duty at San Francisco at 11:00 P. M. The record discloses that Carrier attempted to call at least two other extra operators beside Claimant to fill the vacancy at San Francisco and that the third trick was ultimately filled on June 1st by regular men on an overtime basis.

Claimant reluctantly agreed to fill the assignment at San Francisco if he could arrange transportation from his home to the San Jose but station. Claimant, on reflection, decided not to comply with Carrier's order and, instead of

seeking transportation to the bus station, filed a message with the operator at San Jose, advising Carrier that he would not be available for work on account of personal business. Said message was received by Carrier at 10:26 P. M., June 1, 1964. The following day, a telegram was dispatched to Claimant disapproving the request for leave and ordering Claimant to report for duty that day at 11:00 P. M., in King City.

Claimant failed to protect his assignments as telegrapher on June 1, 1964 at San Francisco and again on June 2, 1964 at King City. Claimant was taken out of service pending investigation for alleged violation of Rule 810 of Carrier's General Rules and Regulations of the Transportation Department on June 3, 1964. Due notice of the formal investigation was served on Claimant and the investigation was held on June 9, 1964. Thereafter, Claimant was dismissed from service by letter dated June 22, 1964 which reads as follows:

"Evidence adduced at hearing held at San Francisco on June 9, 1964, established that after being properly instructed you failed to protect assignment as Telegrapher at 3rd & Townsend Streets, San Francisco, on June 1, 1964, and at King City on June 2, 1964.

Your actions in this case constitute violation of that part of Rule 810 of the Rules and Regulations of the Transportation Department reading:

"They (employees) must not absent themselves from their employment without proper authority. They must report for duty at the prescribed time and place. * * *

For reasons stated, you are hereby dismissed from the service of the Southern Pacific Company."

The instant claim was duly filed, considered and denied by Carrier on the property and is properly before us for determination.

Petitioner asserts that the Claimant was not afforded a fair and impartial hearing. The record discloses that Claimant was neither deceived nor misled by the charges against him and that he had ample opportunity to examine and cross-examine witnesses at the investigation. We find no probative evidence supporting Petitioner's contention that the Claimant was denied a fair and impartial hearing. Claimant chose to represent himself and took no exceptions nor raised any objections at the hearing.

Carrier's ex parte submission to the Board includes additional matter not reflected in the record of the proceedings on the property based upon the Claimant's personal history as an employee of the Carrier. It is well established practice of the Board to refuse consideration of matters not raised on the property and for this reason we shall not consider such evidence in our determination of the controversy.

At the hearing, Claimant admitted the truth of the charges against him and was subject to disciplinary action by his own admission. We find no merit in the contention that Carrier was required to furnish Claimant with transportation from his place of residence on either June 1st or 2nd, 1964 under the pertinent provisions of Rule 8 of the Agreement between the parties. Moreover, Claimant allegedly was absent on "personal business," which required prior approval of the Carrier. No probative evidence was offered by Petitioner in

support of the contention that Claimant's seniority preference was ignored. In fact, the record indicates that no extra telegraphers were available to fill either assignment and that regular telegraphers worked overtime on both June 1st and June 2nd, 1964 to fill the vacancies at San Francisco and King City caused by Claimants unauthorized absences.

The violations were deliberate and premeditated. Claimant was offered an opportunity to protect his assignment on June 2, 1964 at King City after refusing to accept the assignment at San Francisco during the previous day. He did not chose to do so and again refused to comply with Carrier's order on the bases of his initial request which had been denied. Under the circumstances, the punishment cannot be considered as unsupported by the record. While Claimant's unauthorized absence on June 1, 1964 alone might not be considered sufficient to warrant the penalty of dismissal, his further violation of the applicable rules the following day justified the dismissal penalty. Therefore, we will not upset the punishment decided upon by the Carrier. (Award 12438 and others cited therein.)

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied .

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1966.

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