



Award No. 14815
Docket No. TE-13782

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven & Hartford Railroad, that:

1. Carrier violated the parties' Agreement because, commencing October 16, 1961, it improperly held Mr. J. E. Geary, extra operator, out of service without affording him a fair and impartial hearing within the meaning of the Agreement.

2. Carrier shall be required to pay Mr. Geary the minimum hourly rate of pay on the seniority district (\$2.886) for eight hours each day, commencing October 16 to October 30, 1961 (inclusive); and, if any notation was placed on Mr. Geary's record as a result of Carrier's improper action, his record shall be cleared thereof.

OPINION OF BOARD: The issue involved herein is whether Claimant was disciplined without notice of the charge against or benefit of a fair and impartial hearing on said charge in violation of Article 27 of the Agreement between the parties hereto.

The facts, which are not in dispute, were that on October 13, 1961, Carrier assigned Claimant Geary, who was an extra telegrapher, to the vacancy at Norwood Central, Massachusetts, commencing October 16, 1961. The Claimant, who resided in Boston, advised the Carrier's Chief Dispatcher that he did not own an automobile and that there were no available means of transportation that would enable him to reach the destination of said position. Claimant was advised by the Carrier's Chief Dispatcher that it was his problem as to how to get to the point of work, and that his failure to work the position would result in his being taken off the spare board during the time the regular employe remained off duty.

The record discloses that the Claimant was held out of service from October 16, 1961 through October 30, 1961. The record further discloses that the Claimant was not given a hearing. We feel that the holding of the

Claimant out of service amounted to a suspension, for which Claimant was entitled to a hearing as required by Rule 27 of the Agreement. Therefore, it is the opinion of this Board that the Carrier violated the Agreement.

In regard to damages, the record discloses that Claimant would have covered three positions if he was available on the spare board and not held out of service, namely, at Forest Hills for three days, commencing October 18th, at Whittenton Junction for one day on October 22nd; and at Chickering for one day starting October 26th, or a total of five days. Therefore, Claimant shall be entitled to receive five days' pay at the minimum hourly rate of pay on the seniority district (\$2.386) for eight hours for each day.

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 Agreement was violated.

AWARD

Claim sustained in accordance with Opinion as above written.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of October 1966.