

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

NEW YORK CENTRAL RAILROAD
(Southern District)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York Central Railroad (Southern District), that:

1. Carrier improperly dismissed P. C. Mangus from service.
2. Carrier shall reinstate P. C. Mangus with full seniority rights, his service record cleared and pay him for all time lost.

OPINION OF BOARD: We are convinced, after studious review, that the disciplinary action taken by the Carrier was neither arbitrary, capricious, nor unjust.

If we held in favor of the Employees, we would have to do so on procedural grounds. It is true that the investigation hearing commenced August 6, 1965, left much to be desired, as the General Chairman so ably pointed out. If an appeal had been processed after the closing of the August 6th hearing, the Employees would have had a stronger case in winning this Claim on procedural grounds; however, the Employees later agreed to have the initial hearing continued until August 12, 1965. Mr. Foster, the Transportation Superintendent, in his testimony at the August 12th hearing (at which hearing the General Chairman was present) stated in answer to a direct question that on August 10, 1965, an agreement was reached between him and the General Chairman to continue the August 10th hearing to a later date, ". . . Thursday, August 12th, being one of the acceptable days . . ." Mr. Cole, who was the General Chairman involved, was present and did not challenge the truth of the statement then made by Mr. Foster. After this statement was made, the August 12th hearing was terminated and the stenographer made the following notation:

"HEARING CLOSED AT 2:50 P. M."

This compels us to conclude the continuance from August 6 to August 12, 1965, was by agreement, and, consequently, we hold that the defects which apparently existed in the August 6th hearing were waived.

Of more importance, a study of the entire record shows that the Claimant was not deprived of the benefit of due process of law.

Therefore, 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 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 16th day of June 1967.