



Award No. 15980

Docket No. MS-16670

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

HOWARD S. ERICKSON

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: The ex parte submission will be filed within thirty days of the above date by the employe Howard S. Erickson or his counsel against the Chicago and North Western Railway Company as a result of the Carrier's violation of Rules 51, 43(a), 4 and as per the decision rendered following the Investigation under Rule 38. Employe Erickson at the time of the above stated violations also held the position of District Chairman of District No. 1 - Chicago area - for the Transportation-Communication Employees Union.

Monetary claim is being made for eight hours' pay at the pro rata hourly rate of \$3.0478, commencing on March 18, 1966, and continuing until the claim is settled.

The dispute arose when a Chicago Superintendent requested the employe Erickson by telephone to attend a conference after his working hours without advising him if he desired to discuss Union or Railroad business. After the phone call Erickson wrote the superintendent a letter inquiring whether he wanted to discuss Union or Railroad affairs. This was necessary because if Union affairs were to be discussed, he first had to receive approval for expenses from his superior Union officer and also desired to prepare himself properly. It is to be noted Erickson was not under the direct jurisdiction of this Superintendent, nor was his one man station. The personnel file for Erickson and Mount Prospect's station files, his place of employment, are kept and are under the jurisdiction of the Superintendent in Milwaukee. On the same day the Superintendent received Erickson's letter, Erickson received a message from the Chief Train Dispatcher in Milwaukee ordering him to close his one man station at 10:30 A.M. and take No. 648 to Chicago and report to Superintendent Freyer. Erickson complied with these instructions and reported to Superintendent Freyer. He was immediately ordered into conference, in which Union and Railroad business was discussed, without any agreement on either subject. Then a personal remark was made by the Superintendent degrading Erickson and there was an exchange of comments. The Superintendent then requested Erickson to accompany him back to his office. Upon their arrival in the Superintendent's office, the Superintendent informed Erickson he was concerned about his health and was sending him to the Medical Department. The Medical Department gave Erick-

son a superficial examination and released him. The following morning on March 18, 1966, Erickson's station was closed by the Trainmaster, along with written orders for him to carry out. The Trainmaster's orders were carried out and on March 24, Erickson received a letter from Superintendent Freyer advising him of orders the Medical Department had given him to follow, on his March 17 visit. Erickson never received any orders from the Medical Department on his March 17 visit, so requested that an Investigation be held under Rule 38, to clarify the facts. The Investigation was set for April 20 and held on that date. Since Erickson was not working, he personally contacted the Medical Department in an attempt to expedite matters. The Registered Nurse would not talk to him, nor would she permit Erickson to speak with Dr. Gordon. Even though Erickson would have lost a minimum of six days' compensation, due to the fact the Carrier does not compensate employees who are under the jurisdiction of the Medical Department, he still attempted to fulfill these alleged Medical Department orders of March 17 and take the loss in salary, but failed to receive their cooperation.

The questions involved are as follows:

If Erickson was not qualified to carry out the duties of his position, why wasn't an Investigation held by the Carrier under Rule 34?

Why was Erickson held out of service to accomplish the orders and alleged orders, when he could have carried them out without losing one day's wages?

Why do the Trainmaster's and Superintendent's written orders to Erickson conflict with each other with reference to the alleged orders given them by the Medical Department for Erickson to follow?

Why isn't Erickson working when he carried out all orders given to him to the best of his ability?

May a Carrier discipline a Union Representative because of his Union activities in the manner it has been done to Erickson and completely destroy everything which it took him approximately two years to build with the Union and approximately fourteen years as an employee of this Carrier?

OPINION OF BOARD: Close examination of this record reveals that no issue within the Board's power under the Railway Labor Act is presented to it for decision. Only disputes and grievances presenting an issue under the collective bargaining agreement are cognizable by this Board. This is not such a dispute. Accordingly, the claim must be dismissed.

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 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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1967.