



Award No. 16064  
Docket No. TE-15139

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Daniel House, Referee

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**PARTIES TO DISPUTE:**

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

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad, that:

C. F. Harte, regularly assigned Block Operator at R Tower, New York, N.Y., 10:00 P.M. to 6:00 A.M., was falsely accused of the unfounded charge of "falsifying time cards for the following dates: April 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, and May 3, 1962." Charge was not proved at trial held on May 17, 1962, and on June 18, 1962, Mr. Harte attended appeal hearing to appeal the unwarranted discipline of a "Reprimand." His appeal was denied.

Carrier arbitrarily and capriciously disciplined Mr. Harte a "Reprimand" for submitting the above time cards for what he considered a valid claim. Mr. Harte under the Agreement has the right to submit time cards for what he considers valid claims under Regulation T-F-1 and the August 21, 1954 Agreement, Article 5.

Therefore, the service record of Mr. Harte should be cleared of the charge, the discipline of "Reprimand" should be cancelled, and he should be compensated for all time consumed attending trial and appeal hearing.

**OPINION OF BOARD:** At the outset, Carrier objects to this matter being considered on its merits because, it argues, the Organization failed timely to proceed under the Time Limit Rule in Sections 1 (b) and 1 (c) of Article V of the Agreement. The record shows that this contention of the Carrier is wrong.

Claimant had been disciplined by a thirty-day suspension which he served between April 4 and May 4, 1962. According to him, he felt that that discipline had been unjustly imposed, and, according to him, therefore, on May 4 he filed time cards claiming pay for work on the 21 working days of his position during the suspension period; he wrote in the cards that he had

worked the regular hours of his position and made no written indication on the cards that he had not, in fact, so worked, or that he intended the submission of the cards to raise the question of the propriety of the suspension. He submitted the cards, which covered more than four weeks—more, in other words, than one pay period—all at once and attached together as one bundle; time cards are normally submitted by employees for one payroll period at a time.

Carrier charged Claimant with "falsifying time cards" and a hearing was held on that charge on May 17, 1962, as a result of which the discipline of "Reprimand" was imposed by Carrier. The Organization claims the discipline was unwarranted, and was arbitrarily and capriciously imposed.

The burden of one of the arguments of the Organization is that for any discipline to be warranted in a case like this, it is necessary that the trial develop evidence sufficient to lead to the conclusion that Claimant, in filling out and filing the time cards as he did, intended to defraud the Carrier; we agree with this. Consequently, we conclude that a fair investigation in this case would require the exploration by the hearing officer of all possible evidence on which to base a conclusion on this question without having prejudged either that the question of intent was irrelevant or that there was no question but that Claimant had culpable intent. The following colloquy near the beginning of the hearing, between Mr. DeMarco, Organization's Local Chairman, and Mr. Stewart, the Hearing Officer, shows that the investigation was not fair because, before hearing any evidence, the hearing officer had decided this central question:

#### "STATEMENT BY MR. DeMARCO

Mr. Stewart, before we start this, continue this trial, for the record I want to make a request. I'd like to request that this charge be dropped for the following reasons. Mr. Harte has the right to submit any claim for money alleged to be due him, as provided by Regulation 4-T-1 and the August 21, 1954 Agreement, Article 5, and if claims are not considered valid, the proper officer or officers of the carrier must deny them and then progress accordingly as provided by the Agreement. No employee can be disciplined for submitting what he considers a valid claim, no matter who advised him. If it were otherwise, the employees would be deprived of their full rights and due process under the agreement for fear of punitive action taken against them, if the claims might not be valid and supported by the Agreement."

#### "STATEMENT BY MR. STEWART

You have recorded your protest, and we will give it due consideration. We must insist on the trial being completed and the record showing all that took place because of instances where a time card can be improperly submitted by an employee. If an employee submits a time claim for some form of penalty and so indicates **on the time card** that it is a claim, obviously it will be handled as such, but if an employee presents a time card showing that he worked a position which he did not in fact work, then the carrier takes the position that they have the right to charge that employee with falsifying a time card." (Emphasis ours.)

Our conclusion from this that Mr. Stewart had already decided either that the fraudulent intent was proved merely by Claimant's failure to indicate in writing a legitimate intent on the time cards, or that fraudulent intent was not a necessary ingredient of the "crime" — "falsifying time cards" (in either of which cases the hearing results were predetermined and the hearing merely a show with no investigative purpose), is further supported by the record of the hearing; in it we find that Claimant denied any fraudulent intent in making out and handing in the time cards as he did, and we find no evidence on which a conclusion might reasonably be based that Claimant did have a fraudulent intent. In addition, we find that after the investigative hearing and after the reprimand had been ordered, Carrier wrote in the Joint Submission:

"We do not know, we can only speculate, why the claimant submitted time cards indicating he had worked on the days he was off serving suspension. . . ."

If the charge against Claimant had been that he violated some regulation when he failed to indicate in writing on the time cards in question that he had not in fact worked the time claimed, a different discussion and investigation would have been in order; but the charge was "falsifying" and that charge necessarily connotes an intent to defraud. Only speculatively and arbitrarily could the conclusion have been drawn from the record of Mr. Stewart's investigation that Claimant intended to defraud the Carrier.

**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 Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois this 25th day of January 1968.

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