



Award No. 16364

Docket No. TE-14990

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

1. Carrier violated the terms of the Telegraphers' Agreement when, on Tuesday, January 22, 1963 it dismissed from its service Claimant H. E. Malphrus without just reason or cause.

2. Carrier shall now compensate Claimant Malphrus for all time lost resulting from that erroneous dismissal.

OPINION OF BOARD: Claimant in this case was the assigned telegrapher at Spartanburg, South Carolina on January 19, 1963. He had a seniority date of March 17, 1917, having served Carrier for a period of 46 years, thirty of which had been at the Spartanburg passenger station.

On January 19, 1963, there was a power failure, and the lights in the passenger station were thereby affected. When the lights went off, Claimant, as part of his duties and responsibilities, was serving the public at the ticket window, selling tickets, making reservations, etc. The evidence of record indicates that during this power failure, a lady became hysterical, and that there were 20 to 25 people in the passenger station. Claimant testified at his hearing that he was pressed for time with the lights out, people trying to get reservations, many of them excited due to the power failure, etc. He further testified that there were no electric lights burning in the station or on the landing at Spartanburg, that the Duke Power Company transformer had blown, resulting in a blanking of a good section of the City of Spartanburg. His further testimony indicates that immediately after the lights were extinguished, he reported this fact to the second trick Yardmaster at Hayne, who was going off duty, as well as to the on-coming Yardmaster; he then notified the terminal trainmaster and the Signal Maintainer. Testimony elicited at the hearing confirms the fact that the lights were not functioning for about 45 minutes when Train No. 20 approached the Spartanburg station at 11:45 P.M. Claimant testified that the train passed his signal outside the station and that he was under the impression that his signal at the semaphore was burning. Evidence further indicates that the lights were burning inside the station on the panel and indicated on this panel that a proceed signal was

displayed outside the station for on-coming trains. Train No. 20 stopped because there were no lights outside on the train order signal board. This train was, therefore, delayed for a short period of time, and it is because of this that Carrier charged Claimant with a violation of Operating Rules 221 (a) and 801, both of which are quoted below:

"RULE 221(a).

On two or more tracks or in automatic block signal territory, when authorized by the Superintendent, a fixed signal must be used at each train order office, which shall indicate stop when trains are to be stopped for train orders. When there are no orders or the operator is not on duty, the signal must indicate **proceed**.

When the operator receives the signal '31' or '19' filed by the direction, he must immediately display the proper signal, and then reply: 'Signal display 31', or 'Signal display 19', adding the direction, and, until the orders have been delivered or annulled, the signal must not be restored to 'proceed' for trains pulling in that direction. While 'stop' or 'approach' is displayed, trains must not proceed without a clearance form 603."

"RULE 801. (Under Operators)

They will obey the instructions of the station agent with respect to any duties required of them in connection with station work, but must not allow said duties to interfere with their duties as operators."

The investigation of this matter was held on January 22, and on January 23rd, 1963, Claimant was discharged from the service of the Carrier for a violation of the aforementioned operating rules. Claimant was later restored to service on February 27th, 1963, and the instant claim is for time lost in the interim.

As the Organization has pointedly stated in its Ex Parte submission, the main thrust of Carrier's position is that Claimant failed to comply with the second sentence of 221(a): "When there are no orders or the operator is not on duty, the signal must indicate proceed." The incontrovertible facts are that there were no orders for Train No. 20, that it was not scheduled to stop at Spartanburg, that the outside signal was not burning, that No. 20 under these circumstances was required to stop, and that by so doing was delayed for several minutes.

There is no question as to the seriousness of this matter. Another passenger train was due in Spartanburg within a relatively short time, and one need not be clairvoyant to envision what might or could have happened. However, we feel that a bona fide emergency had occurred, and although we agree with the Carrier that Claimant was guilty of a violation of the Operating Rules in their strictest sense, the circumstances seem to militate against the discipline imposed. There is no question that the Claimant could have gone outside the station to check the signal, or he could have asked the Red Caps present in the station to do so, but he was, in our judgment, performing to the best of his ability under the most trying of circumstances. To quote an old cliché: "Hindsight is always better than foresight." We do not disagree with Carrier's contention that the evidence adduced at the hearing

was sufficiently substantial to warrant a finding of guilty. We do, however, find that the discipline imposed, suspension without pay for the time involved, amounts to an abuse of discretion and was, indeed, arbitrary. Due to the aforementioned extenuating circumstances, and in deference to his length of service, we conclude that an oral reprimand would have been sufficient. For these reasons, we will sustain the claim as submitted.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1968.