



Award No. 16949

Docket No. MSX-17751

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

CLAYTON A. TOMANY, SR.

RAILWAY EXPRESS AGENCY, INC.

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

STATEMENT OF CLAIM: I hereby file notice of intention to file ex parte submission with this Board.

My reason for filing is my discharge from R.E.A. Express (Railway Express Agency) on the false charge of inciting a work stoppage at Joliet, Illinois on October 19, 1966.

The parties to the dispute are R.E.A. Express (Railway Express Agency) as a common carrier and the following named employees: Messrs. C. E. Halbin, W. R. Booher, E. A. Yarwood, H. J. Kuhns, J. D. Tucker, and J. N. Meisten; also former employees Messrs: J. A. Stauffer and R. E. Heiken. I further name as parties to this dispute, The Brotherhood of Railway Clerks, and specifically Messrs: F. R. Lewis, H. J. Ripp, and C. L. Dennis.

I hereby request that this Board order my reinstatement to R.E.A. Express (Railway Express Agency) with full back pay for all time since discharge. I further ask for all damages, punitive and otherwise, and also to include the cost of pursuing this case to the absolute limit of this Board's powers.

OPINION OF BOARD: On October 20, 1966, Carrier's employees in Joliet, Illinois, engaged in an unauthorized work stoppage which virtually halted operations at that terminal. Clayton A. Tomany, the Claimant in this case, was cited for investigation for his part in this work stoppage and was subsequently dismissed by the Carrier.

On October 21, 1966, Carrier's Manager R. E. Heiken wrote Claimant Clayton A. Tomany, Sr., as follows:

"You are hereby notified to appear for an investigation to be held in my office located at No. 2 Scott Street, Joliet, Illinois at 10:00 A. M. on Wednesday, October 26th, 1966.

You are charged with inciting on Wednesday, October 19th, 1966 and unauthorized work stoppage prejudicially affecting the operations

of REA Express at Joliet, Illinois on Thursday, October 20th, 1966 in violation of Rule No. 67 of the General Rules and Instructions quoted below:

RULE NO. 67

'The personal conduct and deportment of employes must be such as to reflect credit upon themselves and on the Company, and their personal appearance should be neat, clean and orderly. When on duty they should wear such uniform as may be required.'

You will be held out of service commencing at 12:01 A.M. Friday, October 21st, 1966 pending this investigation.

You may be represented at this investigation by an employe of your choice or a duly accredited representative of the Brotherhood of Railway Clerks."

Claimant requested a postponement of the investigation, which was granted by the Carrier.

The investigation was held on October 31, 1966. On November 4, 1966, Regional Operations Representative Stauffer wrote Claimant, in part, as follows:

"The record of this investigation clearly reveals that the charge covering violation of the above rule was fully established by you on testimony and by the statements and testimony of the witnesses.

The transcript reveals that you acted on your own initiative and without official consent of the B. of R. C. in inciting the unauthorized work stoppage at Joliet, Ill. on Thursday, Oct. 20th, 1966 which seriously effected the operations of REA Express at that office.

In view of the seriousness of this violation, I find it necessary to discharge you from the service of REA Express."

We have carefully reviewed the record in this case and have concluded that the evidence of record discloses no grounds for disturbing the action of the Carrier. (See Awards 10881, 14273 and 16287).

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 Employes involved in this dispute are respectively Carrier and Employes 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 6th day of February 1969.