



Award No. 17104

Docket No. TE-16096

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND
AND PACIFIC RAILROAD COMPANY AND FORT WORTH
AND DENVER RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Joint Texas Division of Chicago, Rock Island and Pacific Railroad and Fort Worth and Denver Railway, that:

CLAIM NO. 1

1. Carrier failed to comply with the requirements of Rule 34(b) of the Telegraphers' Agreement in the case involving R. B. Starr, Agent, Tomball, Texas.
2. The discipline of twenty (20) demerit marks assessed against Agent Starr by Carrier, September 30, 1964, shall be removed and his service record shall be cleared of all charges.

CLAIM NO. 2

1. Carrier failed to comply with the requirements of Rule 34(b) of the Telegraphers' Agreement in the case involving Mrs. A. S. Rice, Agent, Shiro, Texas.
2. The discipline of thirty (30) days' suspension (held in abeyance) assessed against Mrs. Rice by Carrier, September 30, 1964, shall be removed and her service record shall be cleared of all charges.

CLAIM NO. 3

1. Carrier failed to comply with the requirements of Rule 34(b) of the Telegraphers' Agreement in the case involving N. L. Cryar, Agent, North Zulch, Texas.
2. The discipline of twenty (20) demerit marks assessed against Agent Cryar by Carrier, September 30, 1964, shall be removed and his service record shall be cleared of all charges.

OPINION OF THE BOARD: Disciplinary investigations were held on September 18, 1964, concerning Claimants Starr, Rice, and Cryar. The resulting decisions were rendered September 30, 1964. However, the transcripts of the hearings were not furnished Claimants or their representatives until November 12, 1964.

The Organization contends that Claimants were denied their rights under Rule 34 (b) of the Agreement which requires that Claimant be furnished a copy of the transcript of the hearing and notified of the action taken within 20 days from date of completion of hearing. Since Claimants were not furnished with transcripts within the 20 day time period, the discipline assessed Claimants should be removed and their records cleared. The Organization does not question the facts nor the fairness of the hearings and discipline.

Carrier contends Claimants' appeals are based solely upon the technical violation of 34 (b) and not that Claimants were improperly disciplined; that such a violation does not allow exoneration in view of the fact that Claimants were not deprived of any right.

Agreement Rule 34 (b) is clear:

"(b) The employe and/or his representative, shall be furnished a copy of the transcript of the hearing and notified of the action taken within twenty (20) days from date of completion of hearing."

Carrier did not furnish Claimants with a copy of the transcripts of their hearings within the 20 day time period stated in the rule. The Carrier offered no excuse for its delay. This could be fatal where one's rights are denied. However, there being no evidence or allegation by the Organization as to denial of due process or prejudice, the Board finds no merit in the Organizations contention and denies the request for exoneration of the discipline and clearing of Claimants' records, though Carrier violated the Rule.

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 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 violated in accordance with the Opinion.

A W A R D

Claims 1, 2, and 3 sustained as to parts No. 1, and denied as to parts No. 2.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1969.

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