

RATiONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21408**
Docket Number MS-19338

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Thomas F. Fessler
(Union Pacific Railroad Company
((South-Central District)

STATEMENT OF CLAIM: This is to serve notice, as required by the mles of the National Railroad Adjustment Board, of **my** intention to file an **ex parte** submission on March 29, 1971, covering an unadjusted dispute between me and the Union Pacific Railroad Company involving the question:

Reinstatement to position of Station Agent at **Pico-Rivera**, California.

OPINION OF BOARD: This is a discharge case involving Mr. Thomas Fessler, formerly employed by Carrier as Agent-Telegrapher at **Pico-Rivera**, California **Agency**. By letter dated March 12, 1968 Claimant Fessler was notified as follows:

"Please report to the station building, **Pico-Rivera, Calif.**, for formal investigation and hearing at 2:00 o'clock P.M., **THURSDAY**, March 14, 1968, on charges that you failed to account for all moneys due R.E.A. Express during period of May, 1967, to date of audit; February 23, 1968, at **Pico-Rivera** station, in alleged violation of General Rule B, Rule 700, 901, and 913 (A), and special instructions contained in Accounting Department Bulletin No. 39-2, Rule 19(B).

"The investigation and hearing will be held in conformity with Rule 55 of the Agreement between the Union Pacific Railroad Company and the Transportation-Coication Employees Union, effective October 1, 1959, and you are entitled to representation as provided in said **rule**.

"You may **produce** such witnesses in your defense as you may desire at your own expense."

Subsequently, by letter dated March 27, 1968 Claimant received notification that the charges had been sustained by evidence adduced at the hearing and, therefore, he was discharged from the Carrier's service. By letter dated June 12, 1968 Claimant, through his Organization, sought reinstatement with benefits **unimpaired** but without pay. On July 31, 1968 Carrier's Superintendent responded to this request as follows:

"Mr. **D. V. McDermott**
District Chairman
Transportation-Co **ication** Employees Union
291 South Main
Cedar City, Utah

Dear Sir:

Referring to your letter June 12 in which you requested the reinstatement of former Agent-Telegrapher T. F. Fessler.

I have no objection to Mr. **Fessler's** reinstatement, on a leniency basis, with the proviso that he will be restricted from performing service as Agent, Ticket Clerk, or any other **assignment** which would involve handling Company funds.

Mr. Fessler has today been advised that he is reinstated on the above basis.

Yours very **truly**,

/s/ R.D. Smith"

Thereafter, Claimant through his Organization rejected this offer and tendered a counter offer as follows:

"Dear Sir:

Re your letter July 31 file PR-52391 regarding re-instatement of Mr. T. F. Fessler, former Agent-telegrapher.

As stated in your letter, Mr. Fessler has been informed of his re-instatement and of the leniency basis on which the m-instatement is offered.

Mr. Fessler has written me in this regard. He feels that after as many years in good standing as he had, and with the time 'out-of-service' **taken** into consideration, that to be re-instated on a leniency basis would be very detrimental to his work record. He has asked that this organization prevail upon the company to allow him the priveledge of resigning from the service of the company **immediately** upon his being re-instated with a clear work record.

I feel it was not the intention of the company, in taking disciplinary action against Mr. Fessler, to literally 'black-ball' him from employment elsewhere, however, with a leniency re-instatement, this is literally the effect it will have. It is with this in mind, that I request you again take this case under consideration with the above provisions in mind.

Yours very truly,

/s/ D. V. McDermott
District **Chairman TCU**
291 South Main"

Carrier acceded to this request and Claimant was permitted to tender his resignation back-dated to March 12, 1968 and effective March 26, 1968 the day before he was discharged. The resignation was accepted by Carrier with the notation "Services satisfactory - record clear."

No claim alleging violation of the controlling Agreement **ever** was filed or processed on the property by or on behalf of Claimant. Notwithstanding the resignation of March 26, 1968 and the complete absence of any claim of Rules violation in the handling of his discharge, Claimant on February 27, 1971 served notice of his intention to file an **Ex Parte** Submission to the Board seeking reinstatement to his former post as Agent-Telegrapher.

Our review of this record leaves no doubt that the instant claim was not handled in accordance **with** the provisions of the collective bargaining agreement. **On** the contrary, Claimant completely by-passed the machinery on the property and filed his claim directly with our Board. Such handling is not consistent with the requirements of Section 3 First **(i)** of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. The claim is therefore, barred for consideration by the Division, and will 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 Petitioner involved in this dispute are respectively Carrier and Petitioner 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 claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1977.

