

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ILLINOIS CENTRAL SYSTEM**

DISPUTE.—"Claim of the General Committee of the Order of Railroad Telegraphers on Illinois Central System, that the individual agreement required by the carrier to be entered into by W. C. Lynch on October 15, 1921, as a provision to his reinstatement in the service be now cancelled."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, William H. Spencer was called in as Referee to sit with the Division as a member thereof.

HISTORY OF THE CONTROVERSY.—Mr. W. C. Lynch, on whose behalf this claim was presented, entered the service of the Illinois Central Railroad on September 10, 1897, and was assigned to work as a telegrapher on the Tennessee Division. From the date of his entry into service until September 14, 1921, he regularly occupied the position of agent-telegrapher at Halls, Tennessee. On this date, the carrier dismissed him from its employ for alleged cause.

On October 5, 1921, following Lynch's written request for a hearing, Mr. C. R. Young, Division Superintendent, discussed the matter in question with a representative or representatives of the Order of Railroad Telegraphers, and Mr. Lynch. As a result of the hearing, it was agreed that Lynch should be reinstated on a restricted basis. The evidence submitted by the carrier is to the effect that Lynch was reinstated with the understanding that he would not at any time apply for a position as an agent on the Tennessee Division without his superintendent's permission. The evidence submitted on behalf of the petitioner tends to show that the only restriction placed on his reinstatement was that he should not be reemployed at Halls, Tennessee, the station at which the delinquencies had occurred.

On October 15, 1921, Mr. Lynch signed a communication addressed to T. D. Clark, Supervising Agent at Fulton, Kentucky, in which he formally applied "for reinstatement as an employee of the Illinois Central Company to cover only telegraphing as an operator and further agree that I will not file application for an agency on Tennessee Division unless authorized to do so by Superintendent."

On November 21, 1921, the carrier reinstated Lynch and assigned him to a position of telegrapher. Continuing in this capacity down to the date of the present controversy, Lynch, so far as the record indicates, has rendered efficient and loyal service.

For a period of four years, while working as a telegrapher, Mr. Lynch acquiesced in the arrangement and did not question its validity. Following this, he several times applied in vain for agencies. Sometime in 1926, he talked with Mr. Pelley, a vice president of the carrier, about reinstatement to his original employment status. The record does not indicate that on this occasion he challenged the validity of the agreement in question. On September 11, 1926, Mr. Lynch wrote a letter to Mr. Pelley, asking that the agreement be cancelled. As a basis for this plea, he stated that about a week after the hearing on October 5, 1921, while alone in Mr. Young's office, Mr. Young said that "he would not put me back to work until I had signed an agreement to give up agency work." In this letter to Mr. Pelley, Lynch

further stated that because of pressing financial obligations, he signed the agreement in question. It is noted that, so far as the record discloses anything to the contrary, this was the first occasion on which the petitioner had questioned the validity of the agreement which he had signed. On September 18, 1931, Lynch made a written appeal to Superintendent H. W. Williams for a cancellation of the arrangement in question. In this communication, however, he raised no question concerning its fairness or legality. The record indicates that Mr. Lynch did not disclose the existence of the letter of October 15, 1921, to his representative until sometime in 1929.

Beginning in 1929, General Chairman Mulhall of the Order of Railroad Telegraphers on several occasions made appeals to various officials of the carrier for a restoration of Lynch's employment status. In a letter of October 1, 1933, to General Manager Atwill of the carrier, the General Chairman for the first time challenged the validity of the agreement in question.

In 1933 and 1934, the controversy was several times before the Local Adjustment Board No. 3 of the carrier. On February 20, 1934, the Local Board rendered this decision: "The Board is unable to reach a decision as to its jurisdiction in this case".

On July 13, 1935, General Chairman Mulhall again raised with the carrier the question of Lynch's full reinstatement. Unsuccessful in this appeal, the General Chairman, on August 29, 1935, filed with the Third Division of the Adjustment Board notice of intention to make an ex parte submission of the dispute.

CONCLUSIONS OF THE THIRD DIVISION.—Viewing the record as a whole, the Third Division arrives at these ultimate conclusions:

(1) Without passing judgment upon the question whether sufficient cause existed for Mr. Lynch's dismissal on September 14, 1921, the Division does find that Lynch accepted his dismissal and acquiesced in it.

(2) There is nothing in the Agreement between the parties which prohibits the carrier from reinstating on a restricted basis, an employee who has been dismissed under the circumstances of this case.

(3) The carrier herein did on October 5, 1921, agree to reinstate Mr. Lynch on the condition that he would not apply for a position as agent without the consent of his superintendent.

(4) The communication signed by Lynch on October 15, 1921, was a confirmation of the verbal understanding of October 5, 1921. Mr. Lynch was not led by duress or undue influence on the part of the carrier representative to sign this communication.

(5) The conduct of the carrier's representative in asking Lynch to sign the written statement in question in the absence of his representative, particularly in view of the impending strike of railway telegraphers, was questionable, if not improper.

(6) In view of Mr. Lynch's long acquiescence in the arrangement and delay in reporting the irregularity to his representative after the alleged undue influence had ceased to operate, the Division finds that the irregularity in question is not sufficiently serious to justify it in requiring the Division to cancel the agreement in question.

AWARD

The claim is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 20th day of January 1936.