Award Number 232
Docket Number TE-243

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LOS ANGELES & SALT LAKE RAILROAD COMPANY

DISPUTE.—

"Claim of Telegrapher J. A. Turcotte for pay for time lost November 17, 1933, to June 11, 1934."

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 result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with this Division as a member thereof.

An agreement is in effect between the parties bearing date of March 1, 1928.

Mr. Turcotte entered the service of the Carrier on July 25, 1923. From September 28, 1933, to October 10, 1933, he relieved the regular agent who was on leave at Pomona, California. After the regular agent returned to Pomona, the Carrier discovered what it thought to be evidence of negligence on Turcotte's part during his period of service at Pomona, and on November 14, 1933, an investigation was conducted based on the charge that business had been lost to the Carrier through the quotation of an incorrect rate by Turcotte. Three days later Turcotte was dismissed from the service.

The General Chairman representing the employees protested this action, and on February 23, 1934, the carrier's General Manager agreed with the General Chairman to return Turcotte to service immediately, with the understanding that he would be used thereafter only at small reporting stations and that the matter of any claim for time lost would be taken up later and adjusted by the General Chairman and the General Manager. Through circumstances not vital to the consideration of the case, Turcotte did not return to the service until June 11, 1934.

The employees contend that the Carrier violated Rule 7 of the agreement between the parties reading as follows:

> "DISCIPLINE.—When an employee is suspended for an alleged fault, he will be advised of the precise charge against him, and no discipline will be fixed without a thorough investigation, at which the accused may have an employee of his choice present; ordinarily such investigations will be held within five (5) days from date of suspension. If charge is not sustained, he will be reinstated and paid for the wage loss, if any, suffered by him, 'claim for which must be filed within thirty (30) days from date of decision. When a stenographic report of hearing is made, a copy thereof will be furnished the employee and Local Chairman upon application. Right of appeal up to and including the General Manager is conceded * * *.'"

The claim of the employees is that the charge was not sustained and that, therefore, Turcotte should be compensated for time lost. The sole question

is whether or not Rule 7 was violated. Turcotte was advised of the charge against him; an investigation was held at which an employee of his choice was present a stenographic report of the hearing was made and copies furnished; and the right of appeal to the General Manager was not denied. In all of these respects the rule was complied with. Did Trucotte's dismissal amount to a violation of the rule if we can say that in our judgment the evidence did not support the charge against him?

It seems clear from the language of the rule that the decision as to whether or not the charge was sustained was intended to be made by the management. But this does not mean that the rule was an empty gesture or that it afforded no protection to the employees. The protection was against hasty and unjust action on the part of subordinates. The requirements of notice, hearing, representation, and appeal were all designed to assure, so far as possible, a fair opportunity to the employee to be heard, to make his defense, and to have the final judgment rendered by an official not personally involved in the dispute and detached by distance as well as authority from any local feelings or prejudices which might tend to color the action of subordinates on the scene. If this be the purpose of the rule and if the procedure laid down by the rule was followed, as it was in this case, we do not think it can be said that the rule was violated simply because we may take a different view of the weight of the evidence from that taken by the management, or because we think that the discipline which was meted out was not what we might have meted out had we been in the position of the carrier. To assume such a function would be to substitute the judgment of this board for the judgment of the carrier in a matter reserved to the judgment of the carrier by the very agreement we are supposed to enforce.

We think, however, that this much may fairly be read into the rule as an implied condition, namely, that the carrier must not act arbitrarily or in bad faith, or dismiss employees at will without any evidence at all. The provision for a full hearing and for a decision thereafter necessarily implies that there must be some basis of evidence upon which such a decision can be rendered, and that this evidence will be fairly considered by the carrier. But to say that under the rule the management is required to act in good faith and with some basis of evidence to go on and not arbitrarily, is quite a different matter from saying that where there is such a basis for action and the management has proceeded in good faith, the rules requires such a preponderance of evidence in support of the charge as would satisfy the requirements of a strictly legal proceeding. To read the rule in such a legalistic fashion and to insert into it such requirements of proof would be quite unjustified by the language of the rule, and would fetter the judgment of the management beyond what can have been contemplated when the rule was agreed to. The only question for our determination, therefore, is whether the management acted arbitrarily or in bad faith or without any basis of evidence to go on.

Prior to the hearing the General Agent at Pomona learned that on or about October 6th a shipment to the East was made by the California Fruit Wrapping Mills via the Southern Pacific and not via the Los Angeles and Salt Lake Railroad. To find out why, he interviewed the President of the California Mills who called in his chief clerk, and the latter reported that prior to the shipment they had telephoned both the Santa Fe and the Los Angeles agents and that the latter (Turcotte) had quoted a higher rate than the former. At the hearing Turcotte recalled that the California Mills had telephoned and asked for a rate and said that he must have quoted a rate though he could not remember what rate. He admitted quoting a wrong rate to another shipper, which did not result in loss of business but was evidence of the way in which he handled the office; and his testimony in connection with that rate indicated at least some negligence in not keeping himself posted on new tariff rates, which were in the office and which he had seen but which he supposed to be old ones. Turcotte had been dismissed from the service some years previously for sleeping on duty and had later been reinstated; subsequently he suffered demerits for mishandling a train order.

The foregoing was the basis of the evidence on which Turcotte on November 17, 1933, was dismissed. On December 5, 1933, the General Chairman obtained a letter from the Assistant Secretary of the California Mills stating in substance that he could find no record of any telephone call having been made to Turcotte at Pomona and indicated that the high rate on the Los Angeles road had been quoted, not from Pomona, but from the East. Whether or not

the call was actually ever made to Turcotte, and whether or not he quoted a wrong rate, will never be known with absolute certainty. The company's chief clerk had said that the call was made and that Turcotte quoted the wrong rate, and Turcotte said that he remembered receiving a call, and we think that with this evidence before the management, and taking into account Turcotte's somewhat unsatisfactory record, the management cannot be said to have acted in bad faith or so arbitrarily as to amount to a violation of the rule. In any event, Turcotte's dismissal was not permanent; he was offered reinstatement a few months later on terms which the General Chairman accepted. In rejecting the claim for time lost, the General Manager made it clear that he was not reversing the basis of the charge against Turcotte, and we cannot say that in so doing he abused the discretion vested in him by the rule to the extent that we can now overturn it.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary.*

Dated at Chicago, Illinois, this 9th day of April 1936.