Award No. 624
Docket No. TE-674

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Missouri-Kansas-Texas Lines that, Lineman E. W. Davis was unjustly dismissed from the service on March 20, 1937, by Foreman W. P. Price on the alleged charge that Davis absented himself from duty without leave on Friday, March 19, 1937; and that he shall be reinstated in the service and compensated for the loss of wages suffered during the time held out of service, in the amount he would have earned during that period less what he may have earned in outside industry within the same period."

STATEMENT OF FACTS: On March 19, 1937, E. W. Davis was employed as a lineman in a telegraph gang located at that time at Franklin, Missouri. Under agreement between the respondent carrier and the Western Union Telegraph Company, all labor for gangs used in the work of construction, reconstruction, or renewals of certain telegraph and telephone lines as specified in the agreement between those parties, is furnished by the rail carrier, and the foremen in charge of such gangs are furnished by the Telegraph Company, the work of these gangs being under the immediate direction and control of the foremen. The agreement between the petitioner and the respondent does not cover the position of foreman, as the foreman is furnished by the Telegraph Company.

On account of rain on the morning of March 19, 1937, Davis' gang did not go to work. At about 10:00 A. M. of that date, Davis left Franklin, without permission of the foreman in charge, going to Booneville, Missouri, a nearby town, and did not return to the gang until about 11:30 P. M. The weather cleared about noon, and such members of the gang as were available began work at 1:15 P. M.

On the morning of the 20th, when the men of the gang were going to breakfast, the foreman advised Davis and two other men of the gang who had absented themselves the previous day without permission, that they would be laid off one day account having absented themselves without permission.

One of the two other men who had left Franklin the previous day without permission, when advised he was being laid off for the day, made an attack upon the foreman, and a fistic encounter ensued. The foreman discharged the man who had attacked him, and also dismissed Davis on charge of participating in the fight.

Davis made request for hearing under Article 7 of the effective agreement of July 1, 1934, and hearing was held on March 27, 1937.

OPINION OF BOARD: The hearing held on March 27, 1937, met all requirements of the agreement.

The statement in the claim that Davis was dismissed account absenting himself without leave on March 19, 1937, was cleared up at the hearing and in the submissions of the parties, both agreeing that discipline of one day's lay-off was assessed against Davis by the forman for Davis' absence without permission on March 19, 1937, and that his dismissal from the service was on charge of participating in the fight between the foreman and another member of the gang.

The petitioner stated that whilst Davis accepted the discipline administered by the foreman, consisting of laying him off for one day account being absent without permission on March 19, it was contended that as the foreman was not an actual employe of the carrier he had no authority to administer this discipline, nor did he have authority to dismiss Davis from the service.

The Board overrules these contentions. The carrier had the right to determine what authority should be exercised by the foreman in charge of the gang. The authority exercised by the Foreman should not be inconsistent with the provisions of the agreement.

Upon the charge that Davis participated in the fight between the foreman and another member of the gang, we find that the evidence of record does not sustain such charge.

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 employe involved in this dispute are respectively carrier and employe 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 evidence shows Davis absented himself March 19, 1937, without permission, for which he was assessed discipline of one day's suspension. The evidence does not show that Davis participated in the fight between the foreman and another member of the gang.

AWARD

E. W. Davis shall be reinstated and compensated for wage loss sustained subsequent to March 20, 1937, less amounts earned in other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1938.