

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. Caller J. T. Reynolds be restored to service, reinstated on his former position at Big Spring, Texas, with seniority date and rights unimpaired account unjust dismissal.
2. The Carrier be required to compensate Caller, J. T. Reynolds for any and all wage loss sustained."

EMPLOYEES' STATEMENT OF FACTS: "On February 11, 1939, Train and Engine Crew Caller, J. T. Reynolds failed to call proper train porter for passenger train No. 11, leaving Big Spring 9:15 P. M. that day. It has been a practice for negro train porters to trade runs with each other at home or intermediate terminals and for this reason Callers at Big Spring check the Train Dispatchers train sheet to determine what train porter is to be used as the Federal Rest Register will not indicate whether or not Train Porters have traded runs. Porter Gallagher's run was due out that night. However, Porter Gallagher had traded runs the previous night in El Paso with Train Porter, White, and therefore White was the proper porter for service on Train No. 11, February 11, 1939. Train Dispatcher, Underwood, called El Paso on the evening of February 11, 1939 to determine proper porter for service on February 11, 1939 and was advised that Gallagher was the porter. Therefore, Train Dispatcher entered Gallagher's name on the Train Sheet from which Caller Reynolds, secured his information and attempted to call Train Porter Gallagher, but finding him not at home assumed he would show up for his run as was the custom and understanding with the train porters when they were not at their room when called and the trains were regularly scheduled trains, the porters knowing what time the train was due to leave each day."

POSITION OF EMPLOYES: "The agreement rules out of which this dispute arose and which relate thereto are quoted below:

'Rule 21. Discipline and Grievances

'An employe who has been in service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employe of his choice. He may, however,

Reynolds with pay for time lost, who was dismissed from the service account failure to call train porter for train No. 11, February 11, 1939.

At the conference we went over the investigation held in connection with this case very thoroughly, as well as the record of Caller Reynolds.

The investigation clearly shows that Reynolds failed to call porter for the train in question, although the porter who was due out on this train was properly registered on the rest register.

The failure on the part of Reynolds resulted in this train departing from Big Spring without a train porter.

The record of Caller Reynolds as gone over with you in conference indicates that he is a very careless and inefficient caller.

On June 22, 1938, he failed to call train baggageman for train No. 2, resulting in delay to that train, and Reynolds' record was assessed 10 demerits account his responsibility in this case, hoping that such action would make him more careful. However, it failed to have the desired effect, as six months later, or December 22, 1938, he failed to call an engineer for train No. 67, causing delay to that train.

Then, less than two months later, or February 11, 1939, he failed to call train porter for train No. 11.

The investigation in connection with this latter failure on the part of Reynolds conclusively shows that he was guilty as charged; therefore, he was not improperly disciplined, and taking into consideration his record as above recited, we cannot agree to his reinstatement to the service.

Yours truly,

/s/ W. H. Tobin
Assistant Vice President'

"Exhibit A, attached is a copy of the investigation."

OPINION OF BOARD: That this employe had a fair hearing is without dispute. That the employe was discharged by reason of the carrier's findings upon the specific offense with which he was charged is disclosed by letter of Superintendent Pistole dated Feb. 15, 1939. The record discloses that this decision was rendered in the same manner that decisions regarding discipline had always been rendered by the carrier, and that the employe did not object to the manner in which the decision was rendered until he came before this Board. Under these circumstances the objection comes too late.

It has been repeatedly held by this Board that where the carrier has not acted arbitrarily, without just cause, or in bad faith, the judgment of the Board as to propriety of dismissals will not be substituted for that of the carrier. The facts here presented come squarely within this rule. The carrier acted neither arbitrarily, without just cause, or in bad faith.

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 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 discloses no grounds for disturbing the disciplinary action of the management.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.