

Award No. 3035
Docket No. SG-3028

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
SOUTHERN RAILWAY SYSTEM

STATEMENT OF CLAIM: Claim of Mr. B. H. Bradshaw for reinstatement to South Carolina, with full seniority and other rights unimpaired; also reimbursement for all wage loss sustained from July 17, 1944, on which date he was removed from the service of the Southern Railway System for having entered suit in civil courts against the Carrier.

EMPLOYEES' STATEMENT OF FACTS: Mr. B. H. Bradshaw, signal maintainer, Blythewood, South Carolina entered the service in the signal department of the Southern Railway Company on May 12, 1924 as a signal helper and was promoted to an assistant signalman on April 4, 1927 and to a signal maintainer on April 30, 1928. Bradshaw fulfilled the requirements of all these positions until removed from service July 17, 1944 by the Carrier solely because suit had been entered in his behalf.

Bradshaw was removed and is being held from his position as signal maintainer because of suit filed in civil courts as evidenced by the letter he received from Signal Supervisor W. H. Wiley on August 3, 1944 and which is quoted herewith:

"Columbia, S. C., August 3, 1944.

Mr. Bradshaw:

This will confirm my telephone conversation with you on the night of July 17th and my personal conversation with you on July 18th at which times I advised you that as a result of suit having been entered against the Southern Railway Company on June 13th on your behalf for alleged personal injuries which you say were sustained at Killian, S. C. on July 9, 1942 the Management had directed me to take you out of service effective July 17th, 1944 as provided by Rule D of our Operating Rules.

(Signed) W. H. Wiley
WHW

Cy-Mr. Charles"

Under date of August 12, 1944, General Chairman E. C. Melton appealed the action of W. H. Wiley, as provided in the current agreement, to Mr. T. N. Charles, Signal & Electrical Superintendent, who responded on September 20, 1944 as follows:

2. That, if this Board, by some remote reasoning, should hold contrary to Carrier's above-mentioned contention, then Carrier respectfully contends that certainly any sums earned by Bradshaw in outside employment should be off-set against amounts he would have earned if he had continued in service of Carrier.

OPINION OF BOARD: Only one issue is properly before this Board, namely: Is the operating rule of Carrier which provides that "employee who enters suit in a case where total and permanent disability is not alleged, will be removed from service pending withdrawal, settlement or final adjudication of such suit," a valid and enforceable rule?

It was urged before the Board in behalf of Carrier that there was also a violation of the operating rules in failing to report the accident promptly. However, this issue was not discussed on the property and cannot be considered here for the first time.

The facts are not in dispute. The issue presented is solely one of law. We cannot be here concerned with the merits of the personal injury suit. It is sufficient for our purpose that a personal injury suit was commenced and that employee was suspended because of that fact. That much is without dispute,

Rule 21 (a) of Article V of the Agreement provides: "Employees in service more than thirty (30) days will not be disciplined or dismissed without just cause." The question is: Was the commencement of the action just cause for the suspension? To answer that question we are required to determine whether the operating rule is valid and enforceable or void as against public policy.

Were this the first time the issue has been before the Board, there might be justification for protracted discussion in view of the importance of the question involved. However, the issue has been heretofore thoroughly and exhaustively considered by arguments of both carrier and organization, and by opinions of this Board. A study of the master file in Award 1829 indicates that virtually the same arguments there presented in support of the rule are again advanced by Carrier in the instant case. In Award 1829, in disposing of the arguments of carrier on this issue the Board said:

"The carrier has, under the rules the right to dismiss employees for cause but the bringing of legal action against it is not cause within the meaning of the rules, and if it were it could not be upheld. Such a holding would go counter to numerous decisions of this and other divisions of the National Railroad Adjustment Board and as pointed out in some of the decisions this would be against public policy."

The point is made that Award 1829 involved a dismissal while this case involves only a suspension of employee. This is a distinction without a difference and is unimportant. It will be noted under Rule 21 (a) that employee will not be disciplined or dismissed without just cause. When employee is suspended he is disciplined. If the operating rule is against public policy it is void and cannot be invoked against an employee whether it be by way of dismissal, suspension, or other type of discipline.

The First Division also has had occasion to pass directly on this question. In a very exhaustive opinion, Award 3321, First Division, the Board concludes that a rule similar to the one here involved is against public policy and void. The matter is there so thoroughly considered that it would be repetitious to indulge in prolix discussion here. Ready reference may be had to that opinion. We therefore conclude that the operating rule which prohibits employees from bringing suit is against public policy and void. It runs counter to the settled policy of the Board and to the general law as well. See Vol. 14, American Jurisprudence, Page 389, Sec. 196.

In addition to his claim for reinstatement with full seniority and other rights, employee also seeks to recover wage loss from July 17, 1944, date of removal from service.

Rule 21 (h) provides:

"If the charge against the employe is not sustained, it shall be stricken from the record. If by reason of such unsustained charge, the employe has been removed from position held, reinstatement to his position will be made with seniority rights unimpaired and payment allowed from (for) the assigned working hours actually lost at the rate of the position or positions he was entitled to fill during time working hours were actually lost while out of service. If "employment during the period of suspension or dismissal only actual amount of loss will be paid. 'Actual amount of loss' means amount lost, less amount earned, but there shall be deducted from amount earned the necessary actual expenses incurred in earning such amount and any amount received by employe through unemployment insurance."

It appears that since taken out of service, Claimant has been employed elsewhere. The record does not show the actual loss. The case will have to be remanded to the property for the purpose of determining the "actual amount of loss" in accordance with Rule 21 (h).

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 Employes involved in this dispute are respectively carrier and employes 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 Carrier violated the Agreement as contended.

AWARD

- (1) That Claimant be reinstated to his position as Signal Maintainer at Blythewood, South Carolina, with full seniority and other rights unimpaired.
- (2) That claim be remanded to property for the purpose of determining actual wage loss in accordance with Rule 21 (h).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of December, 1945.