

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad Company that the Carrier acted in a capricious and arbitrary manner, when, on March 27, 1945, it assessed J. E. Donley, Agent at Avoca, New York, with a thirty-day record of suspension for having furnished the Third Division of the National Railroad Adjustment Board, through his lawfully accredited representative, the General Chairman of The Order of Railroad Telegraphers, with facts and records concerning his employment and work as Agent at Avoca in Docket TE-2782, on which the Third Division based its Award No. 2835; and that the thirty-day record of suspension thus assessed against J. E. Donley shall be removed and his record entirely cleared of the charges made against him.

OPINION OF BOARD: In the claim resulting in Award 2835 the Carrier in its submission made certain statements of facts which the Organization desired to check and, if erroneous, disprove. The Organization called upon this Claimant for information. He furnished information and also sent the Carrier's records and documents to the Organization through the United States mail. On the basis of the information so secured the Organization prepared its statement at oral hearing dated December 4, 1944, in Award 2835, wherein much of the information is set out and records copied in full. Shortly thereafter, the Carrier conducted an investigation under the rules charging this Claimant with a violation of Rules 'Q' and 746 of the Operating Department and Item 531 on Page 55 of General Instructions. This resulted in administering the discipline which we are here asked to remove.

Rule 'Q' provides in part: Employees "will be held responsible for the proper use and protection of property entrusted to their care". Rule 746 provides in part: Operators "must not make known contents of messages and will consider wire communications as confidential. * * * Care must be taken in preserving and filing telegrams which have been transmitted". Item 531 provides:

"Agents must not accept directions or instructions regarding the handling of accounting business or furnish any information whatever regarding the general business or dealings thereof except when instructed to the contrary, and if correspondence covering such matters is received, it should be referred to the auditor of freight and passenger revenues."

Claimant acted in this matter without the consent and without the knowledge of the Carrier. He furnished information and made known the contents

of telegrams. He did not preserve and protect this property entrusted to his care, but rather placed it beyond his control and the control of the Carrier.

Claimant does not deny these acts but rather asserts here that he had the right to furnish his representatives the information together with the documentary proof.

Section 3, First, (1) of the Railway Labor Act authorizes the submission of disputes here to be accompanied "with a full statement of the facts and all supporting data". The Organization contends that the Carrier did not furnish "a full statement of facts" in its submission and hence justifies the acts of the Claimant as being necessary. The information secured was furnished to the Organization and by it furnished to this Division. The Organization did not invoke nor seek to invoke the orderly processes of this Division in order that the information might be properly produced. It adopted means of its own and the means used by the Claimant were plain violations of the cited rules. The Carrier took the only orderly process open to it under the circumstances. It proceeded to hold an investigation and assessed discipline.

The derelictions of the Carrier, if any, in the proceedings in Award 2835 are not here for review. Its derelictions, if any, neither justify nor excuse the rule violation of the Claimant.

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 Employees involved in this dispute are respectively carrier and employees 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 Carrier did not act arbitrarily or capriciously in this matter in assessing the record of suspension and the claim for removal of the suspension and clearing of the record is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.