

Award No. 5189

Docket No. TE-5164

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad Company:

1. That the Carrier arbitrarily and capriciously suspended Mary Tresko, an extra employe, from work for three days on an alleged charge that she was not available for call on December 26, 27 and 28, 1947, which charges were not proved at an investigation held on December 30, 1947, and at a trial conducted on January 6, 1948; and

2. That the record of Mary Tresko shall be cleared of the charges, and that she shall be compensated for all time lost attending said investigation and said trial, and be reimbursed for the wages she would have earned on the three days on which she was unjustly suspended.

OPINION OF BOARD: The claimant, an extra employe qualified as leverman on Carrier's New York Division, was suspended from work for three days, after an investigation and trial, on finding her guilty of the charge that she had failed to be available for assignments on December 26, 27 and 28, 1947. At the investigation and the trial that followed, these facts were developed: The claimant lived on the fifth floor of a walk-up apartment or rooming house. The phone available to her use, the number of which she had given the Carrier, was in the hall on the ground floor.

The claimant, Mary Tresko, testified that she was told she would be off duty on December 26; that she was in her room on that day until 9:30 P. M. and returned in about twenty minutes; that on Saturday, December 27, she was home all day except for the period from 2:00 to 3:30 P. M., and on that day tried a number of times to call the Carrier's office but was unsuccessful; that on Sunday, December 28, she was at her home until 4:00 or 5:00 P. M., when she left, not returning until 12:15 A. M. On Monday at 10:30 A. M., she received a call and reported for work. Had she worked Friday and Saturday, her seventh, or rest day, would have been Sunday.

The head clerk and a clerk testified that on Friday morning, December 26, attempts were made to contact the claimant by phone to fill a vacancy that had developed for that afternoon; that when some of the calls were made, there was no answer, but in one instance a woman answered the phone but declined to take any message because neither she nor the Carrier knew claimant's room number; that on Saturday, December 27, calls were placed for claimant, and in some instances there was no response, but in

one instance a woman answered the phone and responded, after a wait, that no one answered the knock on the door; and on another occasion on the same day, a woman answered Carrier's telephone call and responded that no one was at home; that on Sunday, December 28, a call was placed for claimant, and again a woman answered and responded that no one was at home; that a call placed on Monday, December 29, reached the claimant.

Article VI, Section 4, of the Agreement between the Organization and the Carrier provides:

"So far as practicable, extra work shall be divided equally among qualified extra employees."

Under this rule, there is imposed upon the Carrier the duty to rotate the work available to extra employees so that it will be divided equally among them. There is the concomitant duty on the part of the extra employee to be available when his services are required. To discharge these reciprocal obligations, it has been the practice on this property for the employee to leave with the Carrier his address and a telephone number through which he might be reached when his services were required. There is no obligation on the Carrier's part, so long as the work is divided equally, to call any particular qualified extra employee. Likewise, no extra employee can anticipate exactly when he most likely may expect a call to work. Thus there is imposed upon the extra employee the burden of providing the means through which, under reasonable circumstances, the Carrier might communicate with him. But, as the Carrier was not obligated to call any particular employee, we do not imply that the extra employee must, every minute of the day, be in a position to make instant response to a call. It is sufficient if the extra employee takes reasonable precautions against missing a call.

When the relationship of employer and employee is created, the employer (Carrier) may assume that, subject to all of the terms of the Agreement governing the employment, the employee will keep himself ready, able and willing to perform the duties of his employment. By reason of the nature of the work of the Carrier, this obligation on the part of the employee is of particular importance. This is so even where the employee is holding a position as an extra. The Carrier has the right to assume that an extra employee will not wilfully or capriciously refrain from responding to a call; and if a Carrier has reason to believe, after a fair hearing, that an extra employee failed, without just cause to be available to receive and respond to a call to service, it may subject such employee to discipline.

Whenever claims arising from disciplinary action taken by a Carrier have been before this Board, the Board has followed the principle that it would not weigh conflicting evidence: if there was evidence which would, if believed, support the charge, the Board would not disturb such finding; and if the penalty imposed was not arbitrary or unreasonable, it would not modify or set it aside. In the instant case, the Carrier, using the means selected by the employee for the Carrier to communicate with her, attempted to call her on three successive days but, while able to complete the calls to the telephone number authorized by the employee, was unable to reach the claimant. Whether the persons who told the Carrier that the claimant was not at home were authorized or not, or acted carelessly and negligently, nevertheless their conduct was not the responsibility of the Carrier but rather of the claimant. She is the one who authorized that means of communication. When we consider this evidence and the surrounding circumstances, such as the season of the year and the weather conditions then prevailing, we cannot conclude that there was no creditable evidence to support the Carrier's conclusion that the claimant did not hold herself available on the days in question; nor can we say that the Carrier, having reached that conclusion, acted arbitrarily or harshly when it imposed a suspension of three days.

By reaching this conclusion, we do not imply that under the rule prevailing on this property, an extra employee must guarantee a means by which

the Carrier may communicate with him. But such employe should take reasonable precautions against a failure to receive a message. And, on the other hand, we do not imply that a single failure on the part of the Carrier to reach an extra employe would support disciplinary action. Our holding here is that the facts disclosed by the submissions in this case do not authorize the Board, on the basis of principles heretofore well established, to disturb the action of the Carrier.

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

The Carrier did not act arbitrarily or capriciously when it suspended claimant from work for three days for failure to be available on December 26, 27 and 28, 1947.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Hummon
Acting Secretary

Dated at Chicago, Illinois, this 25th day of January, 1951.