

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that

(a) the Carrier was capricious, arbitrary, and unfair in dismissing C. P. Deen, regularly assigned relay department employe at "Q" Tower, Palestine, Texas, from the service on December 17, 1946, and

(b) the Carrier be required to make restitution to the heirs or estate of C. P. Deen, now deceased, in an amount equal to what would have been earned by C. P. Deen, had he not been improperly dismissed from service.

OPINION OF BOARD: Mr. C. P. Deen was employed as Telegrapher-Towerman, on the 4:00 to 12:00 midnight trick at the "Q" office, Palestine, Texas. On December 14, 1946, he was charged with (a) absenting himself on December 8, 1946, from duty without proper permission; (b) substituting others in his place without proper permission; (c) failure to make written transfer on proper form when going off duty; and (d) showing incorrect information on Form 149. A hearing was held and thereafter and on December 17, 1946, he was dismissed from service on account of violating Rules 717 and 996. The order of dismissal was appealed to the highest officer on the property who sustained the order of dismissal on June 21, 1947. Notice of appeal to this Board was filed on April 25, 1950. Mr. Deen died on October 2, 1948. The claim is before the Board on behalf of his estate for payment for time lost from the date of his dismissal until the date of death.

Operating Rule 717 reads as follows:

"Employees must not absent themselves from their duties, exchange duties with nor substitute others in their place without proper authority."

Operating Rule 996 reads as follows:

"Operators going off duty must make a written transfer on the prescribed form of all train orders, instructions, unfinished business, condition of wires, position of train order signal and overdue trains. The operator going on duty must not handle the train order or other signals, or train orders until the transfer has been completed. Each operator will personally sign the transfer. When shifts are not continuous, the transfer will be made in the same manner."

It is important that a copy of all train orders be preserved for one year."

The Petitioner contends that the Division Superintendent did not have authority to dismiss Mr. Deen by reason of the provisions of Rule 18 (a).

Rule 18 (a) reads as follows:

"Relay District

(a) Provisions of this rule will apply to 'GC' Office, Houston, 'H' Office, Palestine, 'Q' Office, Palestine, 'Q' Office, DeQuincy, 'MS' Office, San Antonio, 'NO' Office, New Orleans, 'K' Office, Kingsville, and to similar offices which may be created under the jurisdiction of Superintendent of Telegraph."

It is the Petitioner's theory that the "H" and "Q" Offices are, in effect, but one office and all employes were under the direct supervision of the Assistant Manager, Mr. Rogers, who had authority to relieve Mr. Deen; that this office was under the Assistant Superintendent of Telegraph and the Division Superintendent did not have authority to assess discipline. We do not believe these contentions are well taken. Mr. Deen was an operator in an office engaged primarily in handling train orders, and under the operating rules of the Carrier he was responsible to the Assistant Superintendent, Trainmaster, Chief Dispatcher and Agents. It was his duty to ask and receive permission from the Train Dispatcher before leaving his post. The record does not disclose that it was impossible for Mr. Deen to have done this. Under the operating rules he was under the supervision of Division officers. It should follow that his superior, the Division Superintendent, would have authority to assess discipline.

From a careful examination of the record of the hearing, we must conclude that there is evidence which, if believed, will support the findings made by the Carrier that Mr. Deen was guilty of the violations charged. It is not our function to weigh conflicting testimony.

But even if we assume that the position of the Petitioner is correct, nevertheless, reparation should not be ordered for reason of the delay in bringing this claim to the Board. There is a period in excess of three years from the time this matter was last handled on the property and until notice of intent to appeal to the Board was filed. It is true that there is no limitation on the time within which claims may be appealed from the highest operating officer on the property to the Board, and the Board may consider claims presented regardless of the delay. But when, without any excuse appearing, an unreasonable length of time is allowed to elapse from the time it is last heard on the property until it is filed with the Board, an unjustifiable penalty would be imposed on the Carrier if ordered to make reparations for all time lost.

We have, therefore, concluded that an affirmative award is not justified here.

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 was not arbitrary or unfair in finding C. P. Deen guilty of the charges filed against him; that it did not act arbitrarily in ordering his dismissal; that there was an unreasonable delay in presenting this claim to the Board.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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