

Award No. 5536
Docket No. TE-5425

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ATLANTIC COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad:

(1) That the carrier arbitrarily and capriciously dismissed E. C. Cox, agent, Talladega, Alabama, on September 8, 1948, for allegedly having left the premises of the station for a few minutes while on duty without permission on August 19, 1948, in alleged violation of Operating Rule No. 700, and for allegedly having conducted some personal business during those few minutes in alleged violation of Operating Rule No. 705, all of which charges were not proved at an investigation held August 30, 1948, and at a second investigation held September 30, 1948; and

(2) That the record of E. C. Cox shall be cleared of the charges, and that he shall be returned to his former position of Agent at Talladega, Alabama, with seniority and pass rights unimpaired and paid for all time lost since unjustly dismissed.

OPINION OF BOARD: Claimant held the position of Supervisory Agent at Talladega, Alabama, with 23 years service with the Carrier. His assignment was Monday through Saturday, 6:30 A.M. to 4:00 P.M. He was dismissed from the service on September 8, 1948, for violating the following operating rules:

"Rule 700. Employees must not absent themselves from their duties without permission from the proper authority."

"Rule 705. Employees are required to devote their time exclusively to the business of the Company, unless expressly exempted from so doing by proper authority."

The record shows that this claimant was the owner of the City Loan Company. The office of this company was within one-half block of Carrier's depot. It was operated by two employees engaged by this claimant, one of whom was his married daughter. Claimant's home was adjacent to the loan office. The specific charge is that on Thursday, August 19, 1948, at 3:50 P.M., he was found in the office of the City Loan Company, a time previous to the close of his tour of duty with the Carrier.

The evidence shows by the testimony of Lt. Platt of the police department that he saw claimant in the office of the City Loan Company at 3:50 P.M. on August 19, 1948. He states also that he returned to the agency at 4:00 P.M. and remained there until 4:55 P.M., during which period claimant did not return to the agency. Claimant admits being in the office of the loan company

at the time charged but asserts that he merely left a set of house plans with his daughter. There is evidence corroborating his statement that he returned to the agency around 4:00 P.M. The claimant admits that he had no authority from the Carrier to devote any time to private business which belonged to the Carrier. Nor was he authorized to absent himself from work during his assigned hours. The record shows that Carrier had previously warned him and advised that he sever connections with the loan business. There is some evidence that customers of the loan company came to see him at the agency, a matter of concern to the Carrier even though he was not directly responsible for it.

There is much evidence in the record concerning the dealings of this claimant with other employes of the Carrier. That he was loaning money to many of them he admits. He says they were personal accommodation loans. The evidence shows, however, that he was charging them usurious rates of interest. It was his duty to deliver company pay checks to employes. He cashed their pay checks and deducted what he had coming, and, in one instance, he endorsed the name of an absent employe on his pay check in an attempt to obtain what he claimed was due him. In other words, he made use of his position with the Carrier to further his private interests. This sort of thing is harmful to the best interest of the Carrier and we cannot say that it was evidence of arbitrariness for the Carrier to proceed to eliminate the evil.

We think there is evidence in the record which, if believed, sustains the findings of the Carrier. We think it shows that the personal interest of claimant unduly interfered with his assigned duties with the Carrier. He was previously warned and the warning was not heeded. Under such circumstances we are not privileged to judge the credibility of the witnesses and determine as in the first instance an independent conclusion of our own. There being evidence tending to sustain the Carrier's findings, we cannot say that its action based thereon was arbitrary and capricious. Consequently no basis for claim exists.

It is urged that there are procedural irregularities that invalidate the dismissal. While the procedure followed in granting the claimant an investigation is not one to be commended, the record shows that objection was not made thereto. In fact, it shows the course followed was the result of mutual acquiescence and understanding. This eliminates any basis for claim on that ground.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1951.