

Award No. 6646
Docket No. TE-6645

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway of Texas:

(a) That the Carrier acted unjustly, unreasonably, and abused its discretion, when, on April 16, 1951, it arbitrarily dismissed M. G. Aven (seniority date October 10, 1907) agent-telegrapher, Gatesville, Texas, from the service of the railway company on charges unfounded and unproved, and it continues to so act in refusing to give any consideration to the reinstatement of the Claimant; and

(b) That M. G. Aven shall now be reinstated to the service with seniority and all other contractual rights unimpaired, and shall be returned to his position of agent-telegrapher at Gatesville, Texas, and be paid for all time lost pursuant to Article 27-7 of the Telegraphers' Agreement with the Carrier.

OPINION OF BOARD: This is a discipline case. The employee was dismissed for " * * failure to be in proper condition and to properly perform your duties as Agent-Telegrapher on February 22, 1951, and for your violation of Rule 'G' of the Uniform Code of Operating Rules and failure to be in condition to properly perform your duties while working as Agent-Telegrapher on March 2, March 5, March 6, March 7, and March 8, 1951, * * *."

In their "position" before the referee the Labor Members quote Article 27 of the Telegraphers' Agreement which is the discipline rule, and an attempt is made to point out specifically what provisions of the rule were alleged to have been violated. The Organization in its original submission says, "This dispute was handled in the regular order up to and including * * * the highest officer designated by the Carrier to whom such matters may be appealed," which would seem to indicate that no exception is made to procedural matters required by the rule.

The real contention of the Organization is that the charges were not proved, and effort is made to discredit most of the testimony appearing in the transcript of the hearing which supports the charge. Plea is also made for leniency because of the Agent's long years of service with the Carrier.

During the first week in March, 1951, H. M. Chapman, a traveling Auditor of the Carrier, was engaged in making a check on the Gatesville Station.

He testified at the hearing that, "At the time I met Mr. Aven I could detect the smell of alcoholics on his breath and as the day went by the odor became stronger and on March 5 I will say Aven was in fair condition, but could still smell alcoholics on his breath. Tuesday and Wednesday I will state, this was on March 6th and 7th, I found him to be in worse condition on those two dates. And on Thursday morning, March 8th, Mr. Aven appeared to be in fair condition and did not detect any alcoholic odor until noon when Mr. Aven went out for lunch when he returned the odor was very strong." Chapman also stated that for a number of hours during this time Aven was sitting in his car about a block from his office. There was considerable corroborative testimony given by other witnesses.

Complaint is made that the dismissal is harsh and unreasonable, in which connection we have the right and duty to consider his past record. He had been dismissed on at least three previous occasions for violation of Rule G, and at another time he was picked up by the city night watchman on a complaint that he was intoxicated and molesting certain persons. Following an investigation in that case he was allowed to continue in service on the promise that he would never "be guilty of drinking any more beer or any other intoxicants at any time in the future," and that he would resign if he was ever accused of using intoxicants again. We of course are aware that it is rough treatment to force a man to keep such a promise when his job is at stake, nevertheless the Carrier is under no legal obligation to keep him on the job if he cannot leave liquor alone.

We conclude that the truth of the charges was sufficiently established, and coupled with the man's record that the discipline of dismissal was justified.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1954.