

Award No. 8894
Docket No. CL-10908

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Crew Dispatcher Harold E. McCullar, Bakersfield, California, be restored to service with all rights unimpaired and compensation for wage loss retroactive to June 6, 1957.

OPINION OF BOARD: After a hearing Claimant was discharged for objectionable language used toward a railroad telephone operator because she would not give him an outside line contrary to orders. Claimant was not on duty, but sought to use a telephone in a watchman's shanty for business of his own. His defense combined a denial of bad language with the statement that the operator merely heard him talking to himself.

The contention is made that the investigation was not unprejudiced because he was first asked if he desired to resign. But the evidence shows no assumption of guilt, but merely statements to the effect that he could avoid a hearing and keep his record clear by resigning, which was clearly to his interest if he were actually guilty.

Objection is further made that the Superintendent was a witness and should have had no other part in the proceedings. But he was in the line of authority in discipline matters. And in any event his testimony had no reference to the facts of the charge, but only to the conversation in which Claimant was asked if he wished to resign or stand a formal investigation.

The testimony of the telephone operator and of two other employes who heard Claimant's language clearly sustains the charge that he violated the operating rules against quarrelsome conduct and vulgar language toward fellow employes. In view of his own admissions and the record, his denial of his fellow employes' direct testimony was clearly false.

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

That the parties waived hearing on this dispute; and

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 23rd day of July, 1959.