

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines) that:

1. Carrier's dismissal of R. E. Ligon, regularly assigned to Relief Position No. 4 Mechanician-Assistant Wire Chief "DB" General Telegraph Office, San Francisco, California, on charges of having violated, in part, Rule 804, is unwarranted, unreasonable and in abuse of the Carrier's power to discipline.
2. Carrier shall restore R. E. Ligon to his regular position with seniority and vacation rights unimpaired, and
3. Carrier shall, in addition to the foregoing, compensate R. E. Ligon for all wages lost due to Carrier's improper act.

OPINION OF BOARD: After formal hearing held on July 9, 1958, Claimant was notified by the Carrier on July 14, 1958, that he was dismissed from service for the reasons that the evidence adduced at such hearing established his responsibility for recording, without permission, a telephone conversation in transmission over the Carrier's telephone circuits and that such conduct on his part violated the portion of Rule 804 of the Rules and Regulations of the Transportation Department which reads:

"Misconduct . . . affecting the interests of the Company will not be condoned . . ."

The record establishes that the Carrier's finding that Claimant was by the evidence adduced at the hearing and on that basis contended that Claimant was improperly dismissed. The ensuing dispute was not settled on the property and the Claimant appeals to this Board.

The record establishes that the Carrier's finding that Claimant was responsible for recording, without permission, a telephone conversation in transmission over its telephone circuits is supported by substantial evidence which was competent and of probative value. At the hearing two witnesses

testified to such facts on the basis of their personal knowledge and observation. Such testimony was adduced in the presence of Claimant and the General Chairman of the Organization, representing Claimant, each of whom were afforded an opportunity to, and did, interrogate these witnesses in regard to their testimony. The testimony of these witnesses concerning the occurrence which led to the dismissal of Claimant includes statements that they heard the play back of the recording of the telephone conversation made by Claimant. There is nothing in the record to warrant the view that such testimony was patently implausible or that the evaluation of the entire testimony of these witnesses was arbitrary or unreasonable.

The determination here is not affected by the fact that at the hearing Claimant denied the conduct attributed to him by the opposing witnesses. It is well established that this Division will not undertake to resolve or evaluate contradictory and conflicting testimony given by opposing witnesses at a hearing, and that, in cases such as this one, findings based on substantial and competent evidence will be respected. (Awards 6367, 9046, 6430, 4068, 3127, 8431.)

The Organization argues that the use of the tape recorder was not "misconduct" *per se* and that there has been no showing that use of the tape allegedly containing the telephone conversation affected the interests of the Carrier.

It cannot be gainsaid that the unauthorized recording of a telephone conversation between officials of the Carrier by an employe is misconduct on the part of the employe. Such conduct, on its face, suggests that it is a serious offense affecting the interests of the Carrier. Under such circumstances, and on the record here, we cannot say that the Carrier's decision to dismiss warrants the interference of this Division. (See Awards 1497, 3172, 8495, 8822, 9045, 5426.)

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;

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

Claims 1, 2 and 3 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February, 1960.