Award No. 9775
Docket No. TE-11624

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District, that:

1. The Carrier's dismissal of L. E. Woodruff, Second Shift Operator-Leverman, Bay Junction Tower, Sandusky, Ohio, is unreasonable, without just cause, and in abuse of discretion in the assessment of discipline.

2. The Carrier shall restore L. E. Woodruff to his regular position with seniority and vacation rights unimpaired, and compensate him for all wages lost due to Carrier's improper act.

OPINION OF BOARD: Claimant L. E. Woodruff was regularly assigned as Operator-Leverman on the second shift at Bay Junction Tower, Sandusky, Ohio. He had been continuously employed by the Carrier since September 16, 1948. And prior to that he had worked for the Company for approximately two years, but had resigned when he was notified to appear for a hearing to explain why he had overstayed a leave of absence.

The Tower at Bay Junction where Claimant Woodruff was stationed houses an "interlocking plant" which has electrical and mechanical devices, manually controlled, which operate a number of switches, derails, signals and other devices which control train movements. The "derail" is a device designed to throw a train off the track to avoid a collision, if the train runs through it while in its protective position.

Late on the afternoon of December 21, 1958, a cold and cloudy day, a train consisting of three diesel units and a caboose, reached Bay Junction Tower on its way to a terminal point known as Air Line Junction. Certain cars were to be picked up at Bay Junction and moved on to Air Line Junction. The locomotive units were uncoupled from the caboose and moved through

the interlocking territory, from which they were to be shifted to another track where the cars were located.

Claimant Woodruff admittedly failed to sound the emergency horn after he had made an unsuccessful attempt to change the position of a "crossover" and the mechanism failed to operate. The result of Claimant's error, and possibly the errors of others involved, was that the diesel units moved into the derail and all but one truck of the three units were thrown off the track.

The usual investigation followed. The Claimant waived his right to have a representative present. At the conclusion of this inquiry, the Carrier charged Woodruff with a violation of operation Rule 13 and Rule 628 of the interlocking rules. Claimant denied that he had violated Rule 628. And when asked if he was willing to have this investigation converted into a hearing he said that he would prefer a hearing at a later date.

On January 2, 1959, the Carrier wrote to Claimant Woodruff setting January 7, 1959, at Toledo, as the time and place for a hearing on the charge of having violated Rules 13 and 628.

Two days before the scheduled date, January 5, 1959, Claimant wrote to ask for an indefinite postponement of the hearing, stating that he was "in no condition to attend the hearing". On January 6, the Carrier notified Woodruff, by telegraphic communication, that the hearing date was postponed on account of his condition and requested that he please advise as to the earliest time a hearing might be scheduled. No reply to this communication was received. The Carrier again wired Woodruff on January 14th, asking for advice as to an early date for hearing. This was acknowledged by letter, dated January 14, with the following statement:

> "In regard to your message of January 14, fear it will be considerable length of time before I can do this. I suggest closing the case with the testimony the way it is with the exception of Rule 628 was never violated by me at any time."

On January 21, 1959, the Carrier communicated with Claimant Woodruff by both wire and letter, advising him that the hearing was rescheduled for January 26, 1959. Receipt of this notice was acknowledged.

This hearing was held on the 26th, but Mr. Woodruff did not appear. On January 27, 1959 the Carrier notified the Claimant by letter that, because he had failed to appear for the hearing, he was being dismissed from service in accordance with Article 32 (j) of the parties' Agreement:

> "(j) Failure of an employe to appear at investigation or hearing after receipt of proper notification as provided herein, **except when prevented by cause beyond his control**, shall be sufficient reason for his dismissal from the service." (Emphasis added.)

The Union has taken the position throughout these proceedings that the dismissal of Claimant Woodruff was without just cause, and in abuse of discretion in the assessment of discipline. In spite of the fact that Claimant "was able to work his regular position during which the hearings were called", the contention here is that, for some psychological reason, Woodruff was "prevented by cause beyond his control" from putting in an appearance.

But the members of the Board are left without any medical evidence in support of this contention.

We are not here concerned with responsibility for the accident at Bay Junction on the evening of December 21, 1958. We must, however, decide that, under the existing circumstances, a hearing was necessary according to the provisions of Article 32 (a) of the parties' Agreement. If Mr. Woodruff had admitted the charge of violating Rule 628 as well as Rule 13, the Carrier could have assessed a penalty without a further hearing. But since the Claimant persisted in denying that he was guilty of violating one of the two rules in question, the Carrier was required to give him a formal hearing. And by Article 32 (j) Claimant was bound to appear or produce proof of his inability to do so. Without more proof than appears in the record, this Board cannot order the Carrier to reinstate the Claimant. In fact, it is admitted that Claimant was working his regular assignment at the time the Carrier was making every effort to arrange the necessary hearing. His plea is one for leniency. And such a plea must be addressed to the employer and not to this Board. Our function is one of contract interpretation.

We are bound by the language of the parties' Agreement. We have no authority to either rewrite Article 32 (j) or to ignore it.

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

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1960.