

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway that:

1. Carrier violated the terms of the agreement when on April 6, 1959, without just cause, it discharged F. L. Cauble.
2. Carrier shall clear the service record of F. L. Cauble; return him to his former position; and pay him amount of all wages lost.

OPINION OF BOARD: This dispute centers on the dismissal of Claimant for allegedly failing to perform properly his duties as station agent at Azalea, North Carolina.

The record establishes that eight cars loaded with coal were placed at the Azalea station and that Claimant, who was in sole charge of that one-man station, received the waybills for those cars but failed to note that one of the bills showed on its face that the car it referred to should have been at Black Mountain rather than Azalea. The error was not detected until seven days later and, as a consequence, the Black Mountain coal shipment was delayed to a considerable extent. It is clear that Claimant was in charge of the Carrier's interests at the Azalea station, the cars left there and the waybills in his possession that corresponded to these cars. Whatever the human considerations may be for his inadvertence, his failure to note that one car was being mishandled was pure neglect on his part.

This factual situation is based on uncontroverted evidence and, in our opinion, does establish that Claimant's negligence was inconsistent with the responsibilities of station agents prescribed by Rule 1151 of the applicable Agreement. The violation is apparent and it is not material that the Conductor was also at fault. See Award 8488.

Petitioner maintains that the claim must nevertheless be sustained since written notice of the charges against him was not given to Claimant prior to his investigation. This contention was not made during the investigation or

explored on the property although Claimant was duly represented at the time, and the record indicates that he had proper notice of the investigation itself and its purposes. Claimant and his representative were afforded full opportunity to question and cross-examine witnesses and twice replied in the negative when asked whether they had any further questions or evidence to add before the investigation was closed. Under these circumstances, and particularly since the evidence establishing the Rule violation is not controverted or otherwise in issue, Petitioner's contention regarding notice does not carry the force it might possess in other situations. CF. Awards 9046 and 9422.

In view of the foregoing discussion and the holdings of numerous prior awards (See 9046 and 9422, e. g.) no valid reason is perceived for disturbing the Carrier's findings or, although this Referee would be inclined to consider a lesser punishment than dismissal in this case, the discipline decided upon by the Carrier. The claim will be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of April, 1961.