

Award No. 11573

Docket No. TE-10246

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Cincinnati, New Orleans & Texas Pacific Railway, that:

1. Carrier violated the Agreement between the parties hereto when on the 21st day of February, 1957, without just cause, it suspended C. E. Storey from his regular assignment of Agent, Oneida, Tennessee.
2. Carrier violated the Agreement between the parties hereto when on March 7, 1957, without just cause, it discharged C. E. Storey.
3. Carrier shall restore C. E. Storey to service with seniority rights unimpaired and compensate him for all time lost, including necessary expenses he has incurred by reason of his dismissal.

OPINION OF BOARD: Claude Earle Storey, Sr., was the Agent-Telegrapher at Oneida, Tennessee. On February 21, 1957, he received the following telegraph from W. L. Hofmann, Trainmaster:

"YOU ARE BEING RELIEVED FROM SERVICE AT CLOSE OF WORK TODAY, FEB. 21, 1957, FOR YOUR FAILURE TO CARRY OUT MY INSTRUCTIONS GIVEN YOU ON FEB. 12, 1957 CONCERNING THE HANDLING OF U. S. MAIL AT ONEIDA, TENN. INVESTIGATION WILL BE HELD WITH YOU AND YOU WILL BE ADVISED OF THE TIME AND PLACE AT A LATER DATE."

On February 22, 1957, the following letter was addressed to Claimant and received by him:

"Southern Railway System
Operating Department
Office of Superintendent

"Personal—

"Somerset, Ky., February 22, 1957

"Mr. C. E. Storey, Sr.
Oneida, Tennessee

"Dear Sir:

"Please arrange to be present at the office of Superintendent, Somerset, Kentucky, at 9:30 A. M., Central Standard Time, Monday, February 25, 1957 for investigation. You will be charged in this investigation with not complying with Trainmaster's instructions, in violation of Rule 1150 on February 15th, and also improper preparation of time claim, Form 801, for this date.

"You may bring witnesses and representative to sit with you in this investigation as provided for by your work agreement.

"Very truly yours,

/s/ J. B. SINGLETON
SUPERINTENDENT"

On March 7, 1957, the following letter was addressed to and received by Claimant:

"Southern Railway System
Operating Department
Office of Superintendent

"Somerset, Kentucky, March 7, 1957*

"Mr. C. E. Storey
Oneida, Tenn.

"Dear Mr. Storey:

"Please refer to investigation conducted with you on February 25 in which you were charged with failing to comply with Trainmaster's instructions, in violation of Rule 1150, on February 15, 1957 and also improper preparation of time claim, Form 801, for that date.

"It was brought out in the investigation that you did not comply with the Trainmaster's instructions and also that you did not properly prepare your time claim, Form 801, on this date. These are serious charges for which it will be necessary to dismiss you from the service.

"Please turn in any company property you may have in your possession to the Agent at Oneida so that it can be forwarded to my office.

"Very truly yours,

/s/ J. B. SINGLETON
SUPERINTENDENT"

Claimant was returned to the service on the date of May 6, 1957.

It is to be observed that in the order of suspension by the Trainmaster to the Claimant nothing is said about an improper preparation of a time claim, Form 801. That appears for the first time in the notice of an investigation to be held on the Trainmaster's charges directed to him by the Superintendent on February 22, 1957. During the hearing, Claimant testified that in a conversation with the Trainmaster and Assistant Superintendent Exom, held prior to the time any charges had been made, the time claim was called to his attention and he realized for the first time he had made the slip out erroneously and so acknowledged it though he declared it was still his intention to make out a complaint. During that conversation the Assistant Superintendent stated, "Yes, he (meaning Storey) can claim time if he thinks he is entitled to." We do not believe that Carrier is seriously contending Storey did not have a right to file a time claim if he so desired.

Superintendent Singleton who conducted the hearing made the following statement during the investigation:

"Mr. Gardner we are not taking exceptions to Mr. Storey assisting with the mail after he stayed on duty some hour and ten minutes, when the mail man was not present. Certainly Mr. Storey being Agent and being present, it would have been his responsibility to protect the mail. But what this investigation is about is Mr. Storey's attitude toward Mr. Hofmann . . ."

We fully realize it is the recognized attitude of this Board, ordinarily, not to interfere with the discipline of the Carrier, and that we cannot substitute our judgment for that of the Carrier. Nor is it our function to weigh the evidence but rather to determine if there is any substantive evidence to sustain the charge made against an employee. Our responsibility in the instant matter is to determine whether there is any evidence or any substantial evidence to support the charge that the Claimant failed to carry out the verbal instructions given him by the Trainmaster on February 12, 1957. From a diligent examination of the transcript of the testimony taken at the hearing of the charges we must come to a conclusion that there was no substantial evidence, if any at all, to sustain the charges made against the Claimant.

It appears from the transcript that there was considerable discussion between the Trainmaster and the Claimant as to whether the Trainmaster's instructions should have been in writing. Claimant's attitude in this regard would have to characterize as argumentative rather than insubordinate.

For the foregoing reasons we must find the Agreement has been violated, that the charges made by the Carrier were not substantiated nor sustained and that Claimant shall be reimbursed for the time that he lost from February 21, 1957, to May 6, 1957, at his regular rate of pay. The record does not contain any evidence of any expenses incurred by Claimant.

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 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 Agreement has been violated.

AWARD

Claim sustained except for expenses.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1963.