

Award No. 11910
Docket No. TE-13405

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

CHICAGO GREAT WESTERN RAILWAY COMPANY
THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: Claim of The Order of Railroad Telegraphers that:

Carrier engaged in intimidating and coercive activities toward officers of the Organization and interfered in the performance of their function as representatives of the employees; also:

1. Carrier violated the Agreement between the parties, and the Law governing relationship of employer and representatives of the employees, when it dismissed R. W. Schockweiler from the service of the Company, on charges that he violated Company rules while he was acting in the capacity of a legally designated representative.

2. Carrier shall restore R. W. Schockweiler to his former position of Agent-Telegrapher at Fredericksburg with all rights unimpaired and with pay for all wages lost.

CARRIER'S STATEMENT OF FACTS: Claimant Schockweiler, employed as Agent-Telegrapher at Fredericksburg, Iowa, on November 15, 1961, addressed following letter to Agent-Telegrapher Latimer, at Hampton, Minnesota:

THE ORDER OF RAILROAD TELEGRAPHERS
Chicago Great Western System
Division No. 96

Fredericksburg, Iowa

November 15, 1961

Mr. H. E. Latimer,
Hampton, Minnesota

"157. Rights of employees.—Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3)."

Employees have proven beyond all doubt that Carrier has violated the Railway Labor Act, the current Agreement between the parties, and public policy. Carrier unquestionably indulged in interference, influence, and coercion when it required District Chairman Schockweiler to appear for "investigation" on an improper charge, and subsequently discharged him, for activities in connection with his duties as an officer of the Organization. Carrier is well aware that **under the laws of the Organization, a District Chairman of the Organization must be an employe of the Carrier, employed on a position covered by the Agreement on the Seniority District of his jurisdiction.** Nowhere in any law or agreement is there a provision that a carrier may discipline or dismiss an officer of an organization **because of his union activities.** Yet in the instant case, **Carrier did just that.** In order to put District Chairman Schockweiler "in his place," and thus throw fear of reprisals into the employes represented by the Organization, Carrier resorted to arbitrarily and improperly invoking its Operating Rules, and rendered economic reprisal to District Chairman Schockweiler, by dismissing him from the service of the Company, and, obviously hoped to be "rid of him" as an officer of the Organization. Such conduct on the part of the Carrier not only violated the Agreement between the parties, but is also in contravention of the fundamental provisions and principles set forth in the Railway Labor Act, and in addition is contrary to public policy. The claim of the Organization should be sustained.

All data submitted herein have been presented to the Carrier and made a part of this dispute. This submission is made in accordance with and subject to Motion adopted by the Third Division on November 26, 1957.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that a Notice of Intent to submit this claim ex parte was filed by the Carrier with the Board prior to a final declination by the Chief Operating Officer of the Carrier designated to handle such disputes on the property. This was done apparently to avoid a threatened strike, on the premise that such strike if it occurred after the claim had been so submitted could have been enjoined under the doctrine of the **Chicago River case (353 U.S. 30).**

The language of Section 3, First (i) of the Railway Labor Act and the regulations of the Board (Circular No. 1, October 10, 1934) require full compliance with the procedures set forth therein governing the processing of disputes on the property before being submitted here on appeal. These procedures are mandatory and not susceptible of avoidance because of extenuating circumstances. A key provision is that a dispute must be considered and decided by the highest authorized Carrier official before it may be submitted by either party to the Board.

The Board accordingly finds that the claim in this docket was prematurely submitted and that it must, therefore, be dismissed for failure to comply with the procedural requirements of the Act and the regulations issued pursuant thereto cited herein.

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 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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1963.