

Award No. 13187

Docket No. TE-12194

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
READING COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company, that:

1. The Carrier violated the Telegraphers' Agreement when and because it required R. S. Meyer, Agent of dual agency at Lenape, Pennsylvania and Montchanin, Delaware, to appear for investigation in connection with irregularities and falsification in the submission of time returns, Forms 480, 35 No. 5 and; when, in fact, claims for each charge were being handled in accordance with Article 33.

2. Carrier shall be required to clear R. S. Meyer of all charges in this investigation; and

3. R. S. Meyer be compensated for 30 days, account being suspended from his regular assignment at Lenape, Pennsylvania, and Montchanin, Delaware, at the scheduled rate plus all expenses incurred attending investigation, etc.

EMPLOYEES' STATEMENT OF FACTS:

1. There is in full force and effect a collective bargaining agreement entered into by and between the Reading Company, Philadelphia, Reading and Pottsville Telegraph Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The agreement was effective April 1, 1946 and corrected as of September 1, 1951. The agreement is on file with this Division and is, by reference, made a part of this dispute as though set forth herein word for word.

2. The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Division, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

The hearing and investigation also developed that Agent-Telegrapher Meyer claimed and was paid 30 minutes at overtime rate on each date he performed service at the joint agency of Lenape, Pa. and Montchanin, Del. from August 11, 1958 until date he was removed from service, April 3, 1959, which allowance was not proper under existing rules of the collective bargaining agreement.

In view of the evidence presented and facts developed at the hearing and investigation, Agent-Telegrapher Meyer was suspended for thirty (30) days.

This is a discipline case wherein The Order of Railroad Telegraphers request the Third Division of the National Railroad Adjustment Board to set aside the considered judgment of the officers of the Carrier, who are responsible for the proper and efficient operation of the railroad and who passed on the evidence, weighed the creditability of the witnesses, approved the discipline in this case, and substitute therefor the judgment of The Order of Railroad Telegraphers.

Carrier submits, and the Board has so held, that the assessment of discipline is a matter within the discretion of the Carrier. Carrier maintains that in the instant case there was no abuse of discretion in the suspension of claimant Meyer for thirty days. Such action was warranted and justified, and the discipline was not assessed arbitrarily, capriciously or without just cause and your Board has previously held that where the Carrier has not acted arbitrarily, unreasonably or without just cause, the judgment of the Board would not be substituted for that of the Carrier.

Under the factual evidence presented hereinbefore, it is the Carrier's position that claimant was afforded a fair and impartial hearing in accordance with the requirements of Article 32 of the Agreement in effect between Carrier and the Organization. The record supports Carrier's finding that claimant did knowingly falsify his time returns and expense statements for automobile mileage, in view of which Carrier maintains his suspension was warranted and justified. The propriety of the discipline should not be questioned by the Board, as it was not assessed arbitrarily or without just cause.

It must be recognized that it is necessary that discipline be administered in such manner that will bring about the enforcement of effective rules and regulations in order to insure proper and efficient operation. The record does not contain any evidence and there are no mitigating circumstances that merit special consideration or any change in the discipline assessed. Carrier, therefore, requests that the claim as submitted to the Board be denied in its entirety.

OPINION OF BOARD: Claimant was assessed thirty (30) days' suspension on charges of falsification and irregularities in submission of time returns and in falsification of auto mileage. He contends that such suspension by Carrier violates the Agreement and asks for compensation for time lost and expenses in connection therewith.

Claimant bases his claim upon contentions that Carrier had not met its burden of proving the charge made; that a fair and impartial hearing had not been afforded Claimant; and belatedly, that notice of the charges made were vague and insufficient.

Carrier insists that it has met its burden and granted a fair and impartial trial. It contends that the notice was sufficient and that the discipline imposed was reasonable.

We will discuss Claimant's contention in the same order presented above.

Evidence in the record would appear to be sufficient to support a finding that Claimant has, on at least some occasions, falsified time returns and auto mileage. At pages 33 thru 43 there appears evidence clearly indicating that Claimant turned in time actually worked and mileage actually travelled. Further, according to his own testimony, he did file claim for an additional thirty minutes work time during this entire period. It was his position that the 30 minute travel time claim was authorized by Bulletin No. 46. Without deciding whether he was justified in taking this position, we are of the opinion that he was found to have falsified time and mileage reports on March 7, 1959.

We are also of the opinion that the hearing afforded Claimant was not no inadequate as to require a rejection of the findings made and discipline imposed. It is true that there was much confusion and bickering during the course of the investigation. The investigating officer showed a noticeable lack of experience and/or ability to conduct the hearing with calm and orderly procedures. However, it appears that a substantial portion of the confusion was inspired and created by Claimant's representatives. Although the hearing was adequate, the representatives of both parties are vulnerable to some criticism for their conduct at a hearing supposedly constituted to arrive at the true facts of a situation.

The last question to be considered is whether Claimant was properly notified of the charges. This question was apparently not raised until the reply submission. However, Claimant contends that he was charged for violations on certain dates and penalized for alleged violations on previous dates; that he was not charged with violations regarding auto mileage claims, yet was penalized for same; that the charges were generally insufficient.

Here again, we believe the Carrier could, and should be criticized for the general sloppiness of the manner in which the charges were worded and the generalities as to dates and periods used by them. If there was any indication that Claimant had been prejudiced by these generalities we would be inclined to sustain the claim for one might easily be prejudiced by such generalities.

Despite these disturbing shortcomings, we are convinced that Claimant was sufficiently notified so as to prepare any adequate defense which might be available to him. The record reveals that he was, in fact, well prepared to present his theory of defense. Further, Claimant's belated discussion of this argued defect indicates that the inadequacies, if any, were not prejudicial.

No complaint appears regarding the amount of the discipline imposed.

Inasmuch as we cannot sustain Claimant's objections to the procedural and evidentiary aspects of the case, the claim must be denied.

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; 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 18th day of December 1964.