

**Award No. 14170**  
**Docket No. TE-14922**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Benjamin H. Wolf, Referee**

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**  
**(Formerly 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 Rule 29 of the Telegraphers' Agreement when on August 27, 1962 it dismissed L. E. Whitmire from the service of the Company following an investigation, on the same date, which was neither fair or impartial.

2. Carrier shall reinstate L. E. Whitmire with all rights and seniority unimpaired, and compensate him for all time lost resulting from that action.

**OPINION OF BOARD:** Claimant, relief agent, was dismissed from service for failure to properly perform his duties at Gaffney, South Carolina, during the period August 6 through 17, 1962, in violation of Carrier's Operating Rules 1151, 1172 and 1175 and in cashing personal checks in violation of Treasurer's Circular No. 16, revised.

The record is replete with evidence that Claimant did not properly perform his duties and the Organization does not assert that he did. Its complaint is that the job was too much for the regular incumbent, let alone a vacation replacement, and that dismissal was too severe a punishment under the circumstances.

The job was, indeed, one which the incumbent needed 10 to 12 hours per day to perform. There is some merit to the claim that Carrier should have known the Claimant could not adequately perform the duties. He had an unsatisfactory record and had already been dismissed once before for incompetency.

While we may doubt the wisdom of putting this employe into such a difficult job, there are factors which compel us to sustain the Carrier's actions.

Claimant not only failed to do all the work, but he did very little. The little that he did was full of mistakes and errors. When he saw he was falling behind, he did not ask for additional help, but instead hoped he could catch up over the weekend. Thus, he proved himself inadequate not only as to quantity, but as to quality of work and exercised poor judgment when he realized his predicament.

He was not a new employee. He had had approximately three years of service. We may criticize Carrier for putting him on this job, but not for its conclusion that he was not capable of performing the duties of the position.

In addition to his inadequacy as an employee, he clearly violated the Rules in using Carrier's funds for his own purpose, even if he later used his personal check to repay it in full.

As to the severity of the punishment, there is no reason to hold that Carrier acted in an arbitrary or capricious manner. His previous record supports the proposition that there was little hope he would someday make an adequate employee. Under such circumstances, the Board will not interfere with the discipline imposed by the Carrier. Awards 11803, 12738, 12355.

**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 Carrier did not violate the Agreement.

#### 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 February 1966.