

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Herbert Schmertz, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILROAD SIGNALMEN****SEABOARD AIR LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Air Line Railroad Company that:

(a) Facts developed at an investigation held in the office of Assistant Superintendent W. E. Satterwhite at Jacksonville, Florida, on Wednesday, November 28, 1962, failed to prove the guilt of Signal Maintainer D. E. Winfrey, who had been charged with violation of Rule 17 of the current Signalmen's Agreement and that part of Rule 703 of the Operating Rules referring to willful neglect of duty.

(b) The Carrier be required to rescind the letter of reprimand dated November 20, 1962, at Jacksonville, Florida, by Supervisor Telephones and Signal. (Carrier's File: 169)

(c) The Carrier be required to clear the personal record of Mr. D. E. Winfrey of the charges outlined in the letter by Supervisor Telephones and Signals J. H. Barber, dated November 23, 1962, at Jacksonville, Florida. (Carrier's File: 169)

(d) The Carrier be required to remove the discipline of thirty (30) demerits assessed by Mr. L. C. Bates, Superintendent, in his letter of December 11, 1962. (Carrier's File: E-1059; E-1081) (Carrier's File: PD-38803; Sig. 15-3)

OPINION OF BOARD: The issue before the Board in this case is whether or not evidence of sufficient probative weight has been produced to sustain a finding that the Grievant, D. E. Winfrey, failed to comply with the reporting requirements of Rule 17 of the Signalmen's Agreement.

The Organization has argued that the testimony in the transcript fails to conclusively establish that Mr. Winfrey failed in his obligations and that in view of this inconclusiveness the Board must find that the Carrier has been unable to prove the alleged rule violation.

The Carrier argued that the testimony clearly established the violation and that the original position taken by the Organization on the property, and later abandoned in the rebuttal to wit, that the marking off requirements of Rule 17 are permissive, supports their contention that Mr. Winfrey did not give the required notice because he believed he was not so required.

In the handling on the property the General Chairman by letter dated December 19, 1962 to Mr. J. R. DePriest said the following:

" . . . The rule is permissible that an employe may report off 'subject-to-call' and then not answer calls even though he may be available so it is absurd to contend that an employe must be available unless he has reported off 'subject-to-call,' because that is not in the rule."

The question of whether an employe who has not reported off "subject-to-call" must be available is not before this Board. What is before us is whether Mr. Winfrey reported off "subject-to-call."

The testimony on this issue is in conflict and standing alone is not truly and totally susceptible of resolution. On balance, however, it would appear that the dispatcher's work requirements and habits would make his failure to record the information unlikely. This conclusion is further reinforced by the apparent belief held by the Organization that one need not be available even if he has not reported off "subject-to-call." Putting this another way it would appear that the Organization believed that if one reported off "subject-to-call" he released the Carrier from an obligation to call him, but if he did not so report, it was his discretion as to whether he answered the call or not.

We make no ruling as to whether that is a correct interpretation, but we do find it to be sufficiently persuasive supporting evidence to conclude that Mr. Winfrey did not report off "subject-to-call" on the dates in question.

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 Employes involved in this dispute are respectively Carrier and Employes 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 11th day of March, 1966.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.