



**Award No. 15453**

**Docket No. TE-16147**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Don J. Harr, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
(Formerly The Order of Railroad Telegraphers)**

**ERIE-LACKAWANNA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Erie-Lackawanna Railroad, that:

**CLAIM NO. 1**

1. Carrier violated the parties' agreement when on Friday, May 7, 1965, Mr. L. A. Wesenyak was unjustly dismissed from service.

2. Carrier shall reinstate Mr. Wesenyak in service with seniority rights unimpaired and compensate him for all wages lost.

**CLAIM NO. 2**

1. Carrier violated the Telegraphers' Agreement when it failed to render a decision within thirty (30) days to our appeal dated May 24, 1965 from Superintendent Zimmerman's decision of May 7, 1965, which dismissed Mr. Louis Wesenyak from service with the Erie-Lackawanna Railroad Company.

2. Carrier shall, because of violation in (1) above, be required to return Mr. Wesenyak to his former position with seniority unimpaired, clear his record and pay him for all wages lost as provided in Article 10(e).

3. In addition, Carrier shall be required to compensate other employees affected by the reinstatement not less than the amount they would have earned if Mr. Wesenyak had not been dismissed.

4. Carrier to submit to a joint check of records to determine amount due employees.

**EMPLOYEES' STATEMENT OF FACTS:** An Agreement between the Delaware, Lackawanna & Western Railroad Company and this Union (formerly The Order of Railroad Telegraphers), dated July 1, 1953, as amended and supplemented is available to your Board and by this reference is made a part hereof.

Hearing was held as scheduled in the Office of the Trainmaster, Hornell, New York at 9:00 A.M., April 21, 1965. Copy of the transcript of investigation together with copies of exhibits presented at the hearing are attached as Carrier Exhibit A. After reviewing the transcript of investigation, the evidence produced, and in light of the lack of a suitable defense or explanation by the defendant for claiming the unauthorized overtime and not properly reporting this overtime on the appropriate reports, the Division Superintendent determined that discipline of dismissal from all service was justified. Accordingly, under date of May 7, 1965, claimant L. A. Wesenyak was notified of his dismissal effective at once. Copy of notification, Carrier Form SE 3004-A, Record of Discipline, attached as Carrier's Exhibit B. On May 24, 1965, the General Chairman appealed the decision of Superintendent Zimmerman to Carrier's highest officer (Carrier's Exhibit C), requesting discipline be removed from Mr. Wesenyak's record and that he be restored to service and compensated for all wages lost. Two weeks later, on June 7, 1965, without waiting for a reply by Carrier's highest officer, the Organization instituted Claim No. 1, copy of which is attached as Carrier's Exhibit D. Subsequent handling of Claim No. 1 is evidenced by the following exchanges:

Carrier's Exhibit E — Superintendent to General Chairman, 6-15-65.

Carrier's Exhibit F — Gen. Chairman to Vice Pres. Labor Rel., 6-16-65.

Carrier's Exhibit G — Vice President to General Chairman, 7-30-65.

Carrier's Exhibit H — General Chairman to Vice President, 9-1-65.

On July 23, 1965, Vice President-Labor Relations Diegtel replied to the General Chairman's request of May 24, 1965 (Carrier's Exhibit I). On July 30, 1965, Petitioner submitted Claim No. 2 to the Division Superintendent (Carrier's Exhibit J), alleging Carrier's highest officer violated the time limit provisions of former DL&W Discipline Rule, Article 10(e), demanding reinstatement of claimant and payment for all time lost. On August 17, 1965, the General Chairman replied to denial decision contained in Mr. Diegtel's letter of July 23, 1965 (Carrier's Exhibit K), which Carrier answered on October 6, 1965, per Carrier's Exhibit L. Meantime, Petitioner's Claim No. 2 was being handled upward on appeal, as evidenced by the following pertinent exchanges:

Carrier's Exhibit M — Superintendent to General Chairman, 8-3-65.

Carrier's Exhibit N — Gen. Chairman to Vice Pres. Labor Rel., 8-26-65.

Carrier's Exhibit O — Gen. Mgr. Labor Rel. to Gen. Chrmn., 10-6-65.

Carrier's Exhibit P — Gen. Chrmn. to Gen. Mgr. Labor Rel., 10-23-65.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant held the position of Agent at Owego, New York. This position was subject to the Scope Rule and Union Shop Agreement of the former Delaware, Lackawanna and Western Railroad. This was set out in the coordination agreement dated August 22, 1962.

This Agreement reads, in part:

"MEMORANDUM AGREEMENT  
BETWEEN  
ERIE-LACKAWANNA RAILROAD COMPANY  
AND  
THE ORDER OF RAILROAD TELEGRAPHERS

\* \* \* \* \*

4. The following positions shall be included in the scope of the agreement between The Delaware, Lackawanna and Western Railroad Company and The Order of Railroad Telegraphers dated July 1, 1953, effective with the date of this agreement:

Agent — Johnson City, New York

Agent — Owego, New York

Agent — Waverly, New York

Ticket Agent-Operator — Elmira, New York

Agent — Watkins Glen, New York

5. With exception of the Scope Rule and Union Shop Agreement, rules and rates of pay of Telegraphers' Agreements will not apply to such positions until positions are vacated for any reason by regular incumbent as of effective date of this agreement, at which time the positions will be subject to advertisement and rates will be adjusted by dividing monthly rate by 211 and paid on an hourly basis. When positions of Agent at Waverly, New York and Agent at Watkins Glen, New York are bulletined, the carrier will have right of selection from applicants who have at least five (5) years seniority under the Telegraphers' Agreement and displacement rights on these positions will not be permitted. Temporary vacancies on named positions will be filled under Telegraphers' Agreement."

On April 5, 1963, Carrier notified Claimant that he was charged with violation of Rules B, B-1, O-1, O-2, 818 and 820 of the Erie Lackawanna Railroad Company Rules of the Operating Department effective October 25, 1964.

Hearing was set for April 14, 1965. At the hearing Claimant's representative took exception to the notice, alleging that the Claimant had been improperly charged. A new notice was issued by Carrier on April 14, 1965, omitting any reference to a schedule agreement.

The hearing was held on April 21, 1965. On May 7, 1965, Carrier informed Claimant that he was dismissed from service.

Employees filed Claim No. 1, requesting Carrier reinstate Claimant to service and compensate him for all wage loss. The claim was progressed and denied at each level.

Although Claimant held a supervisory position and served at the pleasure of the Carrier, he held seniority under both Telegraphers' Agreements. The hearing must meet the minimum requirements of both Agreements. The Claimant could not be deprived of his seniority except as provided by Agreement.

The hearing held did not meet these requirements. We will sustain Claim No. 1.

Claim No. 2 was filed following the handling of the appeal. This claim consists of four parts.

Part No. 1 will be denied, since Carrier's reply was within the time limit provided by Article V of the August 21, 1954 Agreement.

Part No. 2 will be denied, since the position was an excepted position and Claimant held this position at the pleasure of Carrier.

Part No. 3 will be denied because the Claimants are not named or identifiable.

Part No. 4 will be denied. We cannot request Carrier to search its records to establish a claim for the Employee.

From a review of the record it appears there was reason for Carrier to discipline the Claimant. The Carrier was justified in removing Claimant from his position, but could not deprive him of his seniority rights except by following the Rules of the existing Telegraphers' Agreements.

**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 violated as set out in Opinion.

#### **AWARD**

Claim No. 1 sustained.

Claim No. 2 denied.

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

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.