



Award No. 15712
Docket No. TE-15944

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

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 Transportation-Communication Employees Union on the Southern Railway, that:

1. Carrier improperly dismissed A. L. Huffman from the service on May 27, 1964.
2. Carrier shall return A. L. Huffman to his position of Agent-Telegrapher, Barber, North Carolina, and pay all wages lost.

OPINION OF BOARD: After an investigation, Mr. A. L. Huffman, Agent-Telegrapher at Barber, North Carolina, was dismissed from service on May 27, 1964, for violation of Rule G while on duty on May 21, 1964.

Petitioner on behalf of Mr. Huffman makes claim that Carrier improperly dismissed him from service because he did not use intoxicants while on duty nor did he report for duty while under the influence of intoxicants. In supporting the position that he was not under the influence of intoxicants, it points out that he performed all of his duties properly.

Carrier maintains that this claim is not properly before the Board and should be dismissed because the claim has been amended from that handled on the property. It points out that changes in claims are prohibited by Section 3, First (i) of the Railway Labor Act which requires that claims be handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such claims before they can be referred to a division of the Board. Furthermore, Carrier contends that the appeal of August 19, 1964, was made more than 60 days after the original claim was declined on May 27, 1964, and it therefore should be dismissed for noncompliance with Article V of the National Agreement of August 24, 1954.

Carrier also rejects Claimant's request for reinstatement to service with all rights unimpaired on the grounds that the evidence adduced in the investigation clearly established the fact that Mr. Huffman violated Rule G as charged. It states that Mr. Huffman's own admission as well as testimony of four people who observed him closely on the morning of May 21, 1964, uncontrovertibly substantiated the charge that he reported for duty under the influence of liquor.

The record discloses that Petitioner changed the claim from a request to restore Mr. Huffman to service of the company without impairment of his rights, to the claim under consideration by this Board for compensation for all time lost in addition to reinstatement to service. In a letter of July 16, 1964, appealing the decision of May 27, 1964, dismissing Mr. Huffman from service, the District Chairman stated:

"We feel that the discipline administered to Mr. Huffman, at present time the loss of two months earnings, is sufficient and that consideration should be given toward restoring him to the service of the company."

This letter indicates that Petitioner recognized some basis for disciplinary action but it made a plea for leniency. No monetary claim was presented. There was no mention that Claimant was denied a fair and impartial investigation or that the Agreement was violated.

After receiving a letter of August 4, 1964, refusing the request for restoration of service of Mr. Huffman, the General Chairman again in a letter dated August 19, 1964, asked that Mr. Huffman be restored to service with all right unimpaired. No monetary claim was made. In still another letter of October 29, 1964, appealing the decision of the General Manager who, in his letter of October 14, 1964, declined to restore Mr. Huffman to service of the company, the General Chairman said, "Kindly give further consideration toward restoring Claimant Huffman to service." There is no mention of monetary compensation in this letter. Not until the claim was presented to this Board did Petitioner introduce a request for payment of wages lost. Thus, it is clear that the claim as progressed on the property is not the same claim this Board had before it.

In view of the change from a plea for leniency to a claim for improper dismissal of Mr. Huffman and for payment of all wages lost, in accordance with the well established principle that this Board will not consider claims which were not made during the handling of the case on the property, we dismiss the claim.

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 claim is dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.