

Award No. 15735
Docket No. TE-16487

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The Pennsylvania Railroad, that:

The dismissal of E. J. Blakeman from the service of the Company was harsh, severe, and excessive and E. J. Blakeman shall be restored to the service with all rights and benefits unimpaired and paid for all time lost and expenses incurred as a result of Carrier's action. We also feel that Mr. E. J. Blakeman was denied "due process" of the law, in the handling of the trial *in absentia* held on November 16, 1964.

OPINION OF BOARD: Claimant, a Group 2 block operator, was dismissed from service on November 19, 1964 following a trial, which was duly held on November 16, 1964.

The charges on which dismissal was based concerned Claimant's admitted failure to report to work on time on November 7th and 8th, 1964 as well as his previous unsatisfactory record. Claimant was notified of the charges against him but declined an opportunity to appear at the trial. Thereafter, the discipline imposed by Carrier was appealed upon the theory that dismissal was unduly harsh and excessive.

The material facts are not in dispute. The record reveals that Claimant acknowledged that he had been late reporting to work on two consecutive days as charged by Carrier and that he had been suspended from work for the same offense earlier during the same year. The assertion that Claimant was denied a fair and impartial trial because he did not choose to be present is without merit. Carrier made every effort to accommodate him and actually rescheduled the hearing.

The record reveals that Carrier's findings are based upon substantial evidence; that Carrier's conduct of the trial was neither vindictive nor prejudicial; and that none of Claimant's procedural or substantive rights was abrogated. Therefore, we find no valid basis for substituting our judgment for the disciplinary action taken by Carrier. Accordingly, the claim will be denied. Award 15574, 12438 and others.

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 14th day of July 1967.