

Award No. 16287

Docket No. MSX-17241

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Arthur W. Devine, Referee

**PARTIES TO DISPUTE:**

**H. L. McKEAND**

**RAILWAY EXPRESS AGENCY, INC.**

**STATEMENT OF CLAIM:** (1) I hereby serve written notice in 15 copies, of my intentions to file ex parte submission, which you will find enclosed.

(2) Subject;

Investigation - Alleged Violation

Rule 67 - Held Jan. 19, 1967 - H. L. McKeand  
Joliet, Ill.

I will state the questions involved and give a brief description of the dispute involved between I - H. L. McKeand - and management of R.E.A. Express.

(a) My dismissal from R.E.A. Express on alleged charges of Rule 67, which I did not violated,

(b) My failing to appear at investigation on Jan. 19, 1967. My reasons for not being able to be there, in which I had told Agent Heiken that my brother had been killed, and I would not be able to appear, and this he knew himself but yet denies it now.

(c) That I never admitted being an accessory to inciting a work stoppage at Joliet, Ill. or ever furnishing a statement to this effect, that I have been used and dragged into this only to get at Mr. C. A. Tomany, who has been charged with violation as same. They (management) used me as an example to help their case against Mr. Tomany, for I am no more guilty than all other employees at Joliet, Illinois office, who also participated. I am cited because I was a witness at Mr. Tomany's investigation, in his behalf and I refused to sign statements against him. If I were guilty of these charges, I would not be filing this petition to this Board, because now it may be costly, but I want my job back, as I am not guilty of these alleged charges, and shall take my case to court, if necessary.

I shall file my submission itself within 30 days.

**OPINION OF BOARD:** On October 20, 1966, Carrier's employees in Joliet, Illinois engaged in an unauthorized work stoppage which virtually

halted operations at that terminal. Clayton A. Tomany, a Joliet employe, was cited for investigation for his part in this work stoppage, and was subsequently dismissed by the Carrier. H. L. McKeand, the Claimant in this case, appeared at this investigation, held on October 31, 1966, and admitted that he was an accessory to inciting the work stoppage.

On November 2, 1966, Claimant was charged with:

"inciting on Wednesday, October 19, 1966 an unauthorized work stoppage prejudicially affecting the operations of R.E.A. Express at Joliet, Illinois on Thursday, October 20th, 1966 in violation of Rule 67 of the General Rules and Instructions."

The weight of the evidence clearly shows that the Claimant was one of the primary instigators of the work stoppage in violation of Rule 67 of the General Rules and Instructions. The punishment cannot be said to be arbitrary, capricious, discriminatory or unsupported by the record and in accordance with the broad latitude given Carriers by this Board, in the matter of assessing discipline, "we will not upset the punishment decided upon by the Carrier" (see Awards 2531, 8711, 10881, 14273).

**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 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 claim will be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May 1968.

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