

Award No. 16424
Docket No. TE-14921

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL
(Southern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central-Southern District, that:

1. The Carrier violated the terms of an Agreement when on January 27, 1964, Mr. J. E. Schomaker, Trainmaster, New York Central Railroad, fired Mr. W. A. Furlong, Agent at Connersville, Indiana, for failure to comply with Treasurer Circular No. 29, effective October 1, 1961, and supplements thereto, Item 59, Page 19, Paragraphs A and C. When there was no violation of complying with said Circular.

2. Carrier shall now reinstate Mr. Furlong with full seniority rights, and pay in full for all time lost.

OPINION OF BOARD: Claimant was dismissed from Carrier's service at the close of work on January 27, 1964, for failure to comply with Treasurer's Circular No. 29, effective October 1, 1961, and Supplements thereto, Item 59, page 19, paragraphs A and C, while working as Agent at Connersville, Indiana.

While the Organization makes various allegations concerning the investigation procedure, we need not consider them because after appeal to and conference with the highest officer designated by Carrier to handle such matters, the latter restored Claimant to service by the following letter dated April 1, 1964:

"Concerning our discussion of the case of Mr. W. A. Furlong, who was dismissed from the service as a result of failure to comply with Treasurer's Circular No. 29, effective October 1, 1961, and supplements thereto, Item 59, page 19, paragraphs A and C, while working as Agent at Connersville, Indiana:

It was agreed that Mr. Furlong would be restored to service promptly, with seniority unimpaired; without pay for the time lost; and that his record would be cleared of the above charge, without prejudice to the position of the Carrier that he is not entitled to pay for the time lost. (Emphasis ours.)

In accordance with understanding reached, Mr. Furlong will be permitted to return to his former position of Agent at Connersville; or take the extra board; or displace on any position bulletined since his dismissal.

With respect to the contention of the Organization that Mr. Furlong be paid for the time lost, which the Carrier is unwilling to do, it was agreed that the matter of pay for time lost could be submitted by the Organization to the Third Division of the National Railroad Adjustment Board in the event the Organization so desired."

Therefore, the issue to be decided by this Board is whether the Claimant is entitled to receive pay for the time he lost between the date of his dismissal and the date of his restoration to service.

Regarding this issue, Carrier contends that the above quoted letter was intended to modify Claimant's dismissal to a sixty-day suspension because even though guilty as charged, Claimant's age, years of service and good service record nevertheless dictated that the severity of the punishment be reduced.

Such intention is not expressed by the letter, however. In fact, a completely contrary intention is expressed. The above emphasized language clearly states that Claimant would be restored to service and his record expunged of the charge, thereby indicating that a complete exoneration of Claimant was intended. Otherwise, Claimant's record would not have been cleared.

Consequently, because Claimant was completely exonerated, Article 8, Section 1, subparagraph (f) of the Agreement which states:

"(f) If the final decision decrees that charges against the telegrapher were not sustained, the record shall be cleared of the charges; if suspended or dismissed, the telegrapher will be returned to former position and paid for all time lost less amount earned in any other service."

dictates that the claim be sustained.

In applying this rule we note, however, that the record shows that Claimant returned to service on April 20, 1964, but prior thereto had been on vacation. Therefore, in computing the pay due claimant under the rule Carrier is entitled to take credit for the vacation time allowed.

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 violated by the Carrier.

AWARD

Claim sustained accordingly.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1968.