

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Cincinnati Union Terminal Company that:

(a) The Company arbitrarily, capriciously and with discrimination removed C. L. Willis, Signalman, from service effective January 19, 1970, over the verbal and written advice from both the Local Chairman and the General Chairman, that Mr. Willis had met the obligations of the Union Shop Agreement and that the notice served under date of January 5, 1970 was withdrawn.

(b) C. L. Willis be paid eight (8) hours at the straight-time rate of the position held prior to January 19, 1970; this for each and every work day (Monday through Friday) and continuing until he is restored to service. [Carrier's File: 115-T Signalmen]

EMPLOYEE'S STATEMENT OF FACTS: On January 5, 1970, Vice Chairman of the Brotherhood Willis Abner advised the Manager of The Cincinnati Union Terminal Company that Signalman C. L. Willis had failed to comply with the terms of the Union Shop Agreement by failure to pay fourth quarter 1970 dues and requested that proper action be taken against Signalman Willis in accordance with provision of the Agreement. (Brotherhood's Exhibit No. 1.)

January 7, 1970, Manager G. S. Gray informed Signalman Willis that the Brotherhood's Vice Chairman had notified the Carrier he had failed to comply with the terms of the Union Shop Agreement by failing to remit his monthly dues. He further advised him that if he desired to dispute the charge made by the Brotherhood's Vice Chairman and desired to retain his employee relations with The Cincinnati Union Terminal Company he should, in accordance with Section 5(a) of the Union Shop Agreement, request a hearing in writing within 10 days from receipt of that letter. Also, that his failure to request a hearing within the 10-day period would result in his employment and seniority being terminated no later than thirty (30) days from January 7, 1970. (Brotherhood's Exhibit No. 2.)

January 15, 1970, Vice Chairman Abner advised Manager Gray that Signalman Willis had paid his dues and it was accepted by the Brotherhood and he was now in good standing with the Organization, and therefore the

Mr. G. S. Gray's letter of June 4, 1970 is shown as Exhibit No. 11.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier was formally notified by letter from Willis Abner, Vice Chairman, Brotherhood of Railroad Signalmen, dated January 5, 1970, that Claimant was delinquent in his periodic dues in violation of the terms of the Union Shop Agreement and Carrier was requested to take action according to the provisions of the Union Shop Agreement.

Claimant was instructed by Carrier that Carrier had received notice that he had not complied with the terms of the Union Shop Agreement by reason of his failure to pay monthly dues and that if he contested the allegation it was necessary that he comply with Section 5(a) of the Union Shop Agreement and request a hearing within ten days. Claimant was also told that if he did not ask for a hearing within the period specified in Section 5(a) of the Union Shop Agreement that his employment would be terminated no later than thirty days from January 7, 1970.

The provisions of Section 5(a) of the Union Shop Agreement read in part as follows:

"In the event the employee concerned does not request a hearing as provided herein, the carrier shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the organization, unless the carrier and the organization agree otherwise in writing."

Claimant failed to request a hearing as provided in Section 5(a) of the Union Shop Agreement even though he had been advised that Carrier would have to terminate his employment if he failed to so request.

By letter dated January 19, 1970 Claimant was advised by R. E. Hauss, Engineer of Maintenance, The Cincinnati Union Terminal Company, that, since Claimant had failed to request a hearing, Claimant's employment and seniority have "been terminated effective immediately."

There was no agreement in writing or otherwise between the Organization and the Carrier to exempt Claimant from the provisions of the Rules.

Subsequent to the letter of R. E. Hauss to the Claimant, the Carrier received separate requests from the Vice Chairman and General Chairman that the citation and charges against Claimant be withdrawn.

The record clearly establishes the Claimant was delinquent in his periodic dues that a charge for violation of the terms of the Union Shop Agreement was properly brought against him, that Claimant failed to request a hearing under Section 5(a) of said Agreement even though he knew he would be terminated if he did not so request, and that Claimant was removed from service in compliance with said Agreement.

In view of the foregoing, there is no merit to the claim and it must be denied.

Because of the particular sequence of events in this case we do not reach the question of whether, without the consent of the Carrier, the Organization

has authority to withdraw a charge for non-payment of dues once it is legally and properly made and, if so, by what means and under what circumstances.

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 disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.