

Referee David P. Twomey

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Southern Railway Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Mr. H. W. Rhymer, holding seniority as yardmaster at Asheville, North Carolina, for a day's pay for January 3, 1976 and for each day thereafter at yardmaster's rate, as a result of his dismissal from service.

OPINION OF BOARD: The Claimant, former Superintendent of Terminals at Andover, Virginia, H. W. Rhymer, was removed from this officer position on December 22, 1975. By letter dated January 3, 1976, Mr. Rhymer notified the Superintendent of the Carolina Division that he desired to exercise his seniority as a Yardmaster in Asheville, N. C. By letter dated January 8, the Carrier's General Manager, Mr. Burwell, wrote to the Claimant notifying him to appear at an investigation on January 15, 1976, as follows:

"

Atlanta - January 8, 1976

"Mr. H.W. Rhymer
P. O. Box 466
Appalachia, Virginia 24216

Dear Sir:

Please refer to your letter of January 3, 1976 to Superintendent W. L. Hofmann stating your desire to exercise your seniority as Yardmaster at Asheville, N.C. You will also recall your conversation of December 22, 1975 in connection with your termination as Superintendent Terminals at Andover, Virginia.

You are hereby notified that you are charged with violation of Southern's Operating Rules GR-4, GR-5, and GR-6, as well as basic company policy, including Policy No. 309, Policy No. 310, and the conversion of the property of certain shippers and/or Southern Railway to your own use and gain by taking possession of and/or misappropriating coal removed from certain loaded coal cars which were 'light-loaded' and also

coal from certain derailed cars, and causing the said coal to be sold for your personal gain and benefit.

You are now instructed to report to Superintendent Seay's office at 10 a.m. eastern standard time on Thursday, January 15, 1976, for formal investigation of these charges to determine your responsibility for such alleged misappropriation and sale of the aforesaid coal.

You may bring such representatives and/or witnesses with you as permitted under the collective bargaining agreement between the Yardmasters' Organization and Southern Railway Company. Pending outcome of the investigation, you will not be permitted to exercise your seniority as Yardmaster or in any other capacity.

/s/ E.B.Burwell
E.B.Burwell"

The investigation was held on January 15 and 16, 1976. By letter dated January 24, 1976, from General Manager Burwell, the Claimant was dismissed from the services of the Carrier.

Rule 7(b) of the Agreement states:

"If charges are made against a Yardmaster, he shall be granted a hearing within five days after notice..."

The notice that an investigation was to be held was dated January 8, 1976. The Carrier set the hearing for January 15, 1976, which was seven days after the notice. The Carrier and the Organization have an agreement in which they agreed to hold a hearing within five days after notice. However we do not find the Claimant's substantive rights were prejudiced, and therefore no violation of the Agreement exist in this regard.

The Claimant was notified in the letter of January 8, 1976, of the specific rules and policies with which he was charged. He was also notified that the charges involved the alleged misappropriation and sale of coal from light-loaded coal cars and involved the matter of coal from certain derailed cars. Further the record shows that the General Manager had discussed the

matter in detail with the Claimant prior to his termination as Superintendent of Terminals, and prior to the investigation. We find that the record is clear that the Claimant was well aware of the specific charges against him. He requested the presence of Mr. Gilby. He brought three additional witnesses to the investigation, Mr. Sanders, Mr. Long and Mr. Pleasant. And, at no time did the Claimant or his representative seek an adjournment in order to prepare a defense to unanticipated matters. An objection and response follows:

Mr. Stover: Well, before you do that, I would love to enter my objections to the material that Mr. Lucas has entered into the investigation. I think this would be the correct time for it. According to the letter that was dated January the 8th with your signature on it, it don't state anything about Pleasant Trucking Company and we're not concerned with the business of Mr. Pleasant or whatever he's got and being that we're not charged with anything concerning Pleasant Trucking Company, we certainly see no reason for this to be entered into it and we object to it at this time.

Mr. Burwell: I would like to ask one question on the basis of your objection, Mr. Stover. On the basis of your objection, as you stated, why did you bring Mr. Pleasant to this investigation as a witness.

Mr. Stover: I didn't bring him. Mr. Rhymer requested that he be here because there was some concern over Mr. Pleasant's activities.

And the disposition of the matter of the testimony of Mr. Pleasant follows:

Mr. Burwell: All right, the only other question I have now is, I want to review again the fact that Mr. Pleasant was here at the beginning of this investigation and for the purpose of being a witness for Mr. Rhymer and, which was yesterday and he's not present today and when I raised his name, you said he couldn't be here and I want it clearly understood that I am willing to postpone this investigation...., not postpone but recess it until such time that Mr. Pleasant can be here. Is that understood, Mr. Stover?

Mr. Stover: Yes sir, we understand that. We're not caring to present Mr. Pleasant as a witness.
Mr. Burwell: You're withdrawing him as a witness?
Mr. Stover: Withdrawing him, that's right.
Mr. Burwell: You agreeable to that, Mr. Rhymer?
Mr. Rhymer: Yes sir.

We find that the Claimant was given full opportunity to cross-examine witnesses, to present witnesses of his own choosing and to present his case as he and his representative saw fit:

Mr. Burwell: Now, is there anything further, Mr. Stover, that you desire to present in connection with this investigation?
Mr. Stover: No sir.
Mr. Burwell: You have no further witnesses to present?
Mr. Stover: No sir.
Mr. Burwell: You don't desire to requestion any of the witnesses that have already been presented?
Mr. Stover: No sir.
Mr. Burwell: Mr. Rhymer, do you have any further statements or any further questions that you desire of witnesses that have already testified or any additional witnesses to present?
Mr. Rhymer: No sir.

We find that the record contains not only substantial evidence of the Claimant's responsibility in this matter, but contains clear, competent and compelling evidence, including in part the Claimant's own testimony, that the Claimant was in violation of the Operating Rules and Company Policies with which he was charged. We are cognizant of Mr. Seay's assessment of the high quality of Mr. Rhymer as a railroad man. We find that the discipline of dismissal is neither arbitrary, capricious or excessive.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

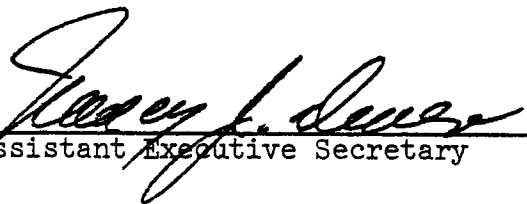
The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1978.