

Award No. 1184

Docket No. 1111

2-IGN(SAU&G)-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—CARMEN**

**INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY,
SAN ANTONIO, UVALDE AND GULF RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That is was improper under the current agreement to re-employ or reinstate B. G. Tracy in the service and that accordingly the carrier be ordered to cancel such transaction.

EMPLOYEES' STATEMENT OF FACTS: Pursuant to investigation held on February 23, 1944, Carman B. G. Tracy was discharged by the carrier on March 13, 1944, due to having been found very antagonistic, no doubt under the influence of intoxicating liquor and threatening employes with a pistol while on shop premises February 13, 1944. This is confirmed by Exhibits 1 and 2 submitted. Exhibit 1 is signed by Mr. Bell, general car foreman, and approved by Mr. Armstrong, master mechanic. Exhibit 2 is addressed to Mr. Armstrong, master mechanic, by Mr. Bell, general car foreman.

The carrier bulletined Carman Tracy's vacancy at San Antonio on March 14, 1944, the day following his dismissal, and Carman R. L. Armstrong being the senior applicant was assigned thereto on March 21, 1944. This assignment was made in due course after the bulletin of March 14 expired. This is affirmed by Exhibits 3 and 4, submitted. Exhibit 3, is a copy of Master Mechanic Armstrong's Bulletin No. 18, dated March 14, and Exhibit 4, is a copy of Master Mechanic Armstrong's Bulletin No. 18-A, dated March 21.

On May 1, 1944, the carrier moved, independent of the representatives of the carmen, to put Carman Tracy back in the service, and on the position which he occupied prior to his removal and dismissal from the service. This reversed all conclusions, decisions and actions of the management established in Exhibits 1, 2, 3 and 4, and which were fully concurred in by the carmen's local committee.

The carrier has declined to adjust this dispute or submit it jointly to this Division for determination, as will be evidenced by the copies of letters submitted and identified as Exhibits 5 and 6, dated respectively October 5 and 8, 1946.

The above record shows that following receipt of Award 1119 the subsequent negotiations, consisting of several conferences and exchange of correspondence between the parties, failed to result in an amicable adjustment of the controversy, and, as a consequence, the employes have resubmitted the case to your Honorable Board for further consideration and decision.

As previously stated the carrier's original submission and rebuttal brief, the employes' original submission and rebuttal brief covering the previous submission of this same dispute (Docket No. 1031, Award No. 1119) are contained in the files of your Honorable Board. The facts and circumstances and the position of the carrier as set forth in Docket No. 1031 are the same today; therefore, the carrier respectfully requests that its original submission and rebuttal brief in Docket No. 1031 be made a part of this submission, and, together with additional facts and circumstances and position of the carrier as set forth above covering the negotiations between the parties following receipt of Award No. 1119 in Docket No. 1031, be reviewed by your Honorable Board in its further consideration of this dispute.

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

The carrier or carriers and the employe or 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 were given due notice of hearing thereon.

The question of re-employment is not involved in this case—it hinges on reinstatement.

The Board finds that the evidence in this particular case does not warrant a reversal of the carrier's action in reinstating this employe with seniority unimpaired. The Board is reluctant to wipe out seniority of long standing under the circumstances cited. It finds that the carrier reconsidered its action, found mitigating circumstances and, therefore, considered the time that the employe was off as a suspension as discipline enough for the charges that were preferred and later held to be in doubt.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of May, 1947.