

Award No. 1188

Docket No. 1115

2-SP(PL)-MA-'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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (MACHINISTS)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES: That the refusal to reinstate Machinists S. P. Roberts and J. G. Black is unjust and that accordingly the carrier be ordered to reinstate them to all service rights with pay for all time lost since September 25, 1946.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed J. G. Black on October 12, 1924, and S. P. Roberts in 1929, hereinafter referred to as the claimants, as machinists at El Paso, Texas.

Claimant Black was regularly employed during the hours of 7 A. M. to 4:30 P. M., and Claimant Roberts was regularly employed during the hours of 7 A. M. to 3 P. M.

Identical charges were preferred against these claimants on April 20, 1946, for having entered into an altercation about 2:45 P. M. on April 6, and therein they were notified to appear for hearing to begin at 10 A. M. on April 25.

The hearing of these claimants was concluded at about 9:15 A. M. on April 26, and on May 8, 1946, they were discharged from the service of the carrier.

The dismissal of these claimants has been handled in accordance with the collective controlling agreement, effective April 16, 1942, up to and with the highest designated carrier officers to whom such matters are subject to appeal, with the result that said officers have declined on more than one occasion to reinstate these claimants, and finally refused to submit said dispute jointly to this Division for determination. This is affirmed by the submitted copies of letters identified as Exhibits 1, 2 and 2-1, respectively, dated September 25, October 1 and November 29, 1946.

POSITION OF EMPLOYEES: It is submitted that these claimants committed no offense about 2:45 P. M. on April 6, 1946, about 1 hour and 45 minutes before the end of the shift of Claimant Black, and about 15 minutes before the end of the shift of Claimant Roberts, which could be construed by any reasonable men or management as constituting justifiable or good reasons for the termination of the long established service rights of these claimants for life, or for that matter longer than September 25, 1946, with-

current agreement, the carrier respectfully submits that it should be dismissed.

If, however, the Board elects not to dismiss same, the carrier then respectfully requests that the claim be denied on the showing it has made that the claim in its entirety is without merit.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 evidence in this case indicates that the discipline administered was too severe in that the employees were both dismissed from the service in which they had been employed for a long time for an altercation that was a minor affair and has been referred to as an argument, or quarrel, that grew out of a discussion of proposed change in working conditions. Mr. Black was local chairman of the machinists' committee. It is clear from the records that the employees as well as their representatives regret the incident, and, in fact, attempted to handle the case on a leniency basis.

AWARD

That Messrs. Roberts and Black be reinstated in the service of the carrier with seniority unimpaired but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1947.