

Award No. 1820
Docket No. 1655
2-AT&SF-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Coach Cleaner James Donaldson was unjustly dealt with when he was removed from the service at the close of his shift on January 7, 1953.
2. That accordingly the Carrier be ordered to restore the aforesaid Coach Cleaner to service with seniority rights unimpaired and paid for all time lost retroactive to January 7, 1953.

EMPLOYES' STATEMENT OF FACTS: Coach Cleaner James Donaldson, hereinafter referred to as the claimant, was first employed as such by the carrier at 21st Street Coach Yard, Chicago, Illinois, with a seniority date of January 27, 1947 and on January 7, 1953 he held active number 62 on the coach cleaners' roster of 154 coach cleaners employed at the point—92 coach cleaners junior to the claimant on the seniority roster. The claimant was regularly employed and assigned until the end of his shift on January 7, 1953 on the 7:00 A. M. to 3:00 P. M. shift.

Under date of December 12, 1952, Master Mechanic H. F. Mackey directed a letter to the claimant notifying him to appear for formal investigation at 3:30 P. M., December 17, 1952 to determine the facts in connection with the excessive accumulation of demerits on his personal record, a copy of which is submitted herewith identified as Exhibit A.

Investigation was held as scheduled on December 17, 1952 and submitted herewith and identified as Exhibit B is a copy of the investigation transcript.

Under date of January 7, 1953, Master Mechanic H. F. Mackey directed a letter to the claimant advising him that he was being removed from the

in the best interests of the employe and the carrier in endeavoring to avoid, if possible, the dismissal of an employe. The best evidence of this is the employe's personal record which clearly shows he repeatedly violated his trust and absented himself from his regular duties to enter cars seeking lost things of value.

The claim of the employe is that the claimant:

"... was unjustly dealt with ..."

in being removed from service on January 7, 1953.

It is alleged that the claimant was twice disciplined for the same offense.

The carrier's view is that neither of these allegations have been or can be proved, for the reasons:

1. That positive evidence of probative force is present in each application of "discipline by record" to this claimant's record, strengthened by the claimant's free and wholly voluntary acceptance of such discipline.
2. That the carrier has not acted arbitrarily, without just cause or in bad faith.
3. That the carrier has shown no bias or prejudice and that there has been no abuse of discretion by the carrier, in the handling given the claimant.

for which reasons, if the Board should decide to accept jurisdiction in this case, the claim should be denied in its entirety.

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.

Carmen of System Federation No. 97 contend carrier unjustly dealt with Coach Cleaner James Donaldson when, effective at the close of his shift on January 7, 1953, it removed him from its service. Because thereof they ask that he be restored to its service with seniority rights unimpaired and be paid for all time lost. See Rule 33(g) of the parties' effective agreement.

Claimant was first employed by carrier on January 27, 1947, at its 21st Street coach yard in Chicago, Illinois, where, on January 7, 1953, he was regularly employed. On December 12, 1952, H. F. Mackey, Master Mechanic, advised claimant by written notice of a formal investigation to be held in his office "to determine the facts in connection with the excessive accumulation of demerits on your personal record." Hearing was had on December 17, 1952, and on January 7, 1953, H. F. Mackey, Master Mechanic, notified claimant that because of an excessive accumulation of demerits assessed against his record he was being removed from carrier's service as of the close of his shift on that day. This is the action complained of.

Carrier contends that no sincere effort to settle this dispute on the property was made by the organization and that consequently the matter is not properly here, citing Award No. 1433 of this Division which says:

"Both the Railway Labor Act and the established procedure on the property require that cases be conferred upon by the parties before they will be recognizable by the Board. This means a sincere effort be made to solve the dispute not a mere perfunctory conversation or reference to it."

The record discloses that the dispute has not been considered and discussed by the parties involved in conference on the property because of the attitude carrier's officials in charge took when the matter was brought up. For this the organization cannot be blamed.

Organization contends claimant was not tried on a proper charge, such as contemplated by Rule No. 33, but was tried on the basis of his record and that this resulted in his being twice disciplined for the same offense because discipline had been determined and fixed by demerits being assessed against his record each time he acknowledged guilt of the charge made against him, or was found guilty thereof on investigation. In this respect the Organization contends the "Merit System" used by carrier is in violation of their agreement.

On July 1, 1923, carrier, by Circular No. 56, published and put into effect rules relating to a system of "Discipline by Record" or what it says is commonly known as the "Brown System." This system provides that a record will be kept of each employe on which demerits and reprimands assessed will be shown, as well as demerits and reprimands cancelled, together with special credits, and the reason therefor set out. It fully explains the system, particularly as to how credits can be obtained, and then provides: "A balance of sixty demerit marks will subject an employe to dismissal." Before such action can be taken, the rules provide the employe will be called in by a proper official who will go over his record with him. That was the purpose of the hearing in this instance.

Rules of the parties' agreement relating to discipline, including 33(d), do not take from carrier the right to discipline its employes in proper cases and to make and put into effect reasonable rules for that purpose. That is what carrier did. Claimant knew of and was familiar with the provisions thereof. He was not notified to appear at this hearing because of any charge being made against him but solely for the purpose of determining the status of his personal record in regard to demerits assessed against it and the effect thereof. With the 30 demerits properly charged against him as of November 1, 1952,, he had accumulated a total of 100. That was far beyond the 60 which the rules say will subject him to dismissal and justified the carrier in dismissing him. It was a hearing provided for in the rules to safeguard the employe by calling to his attention the condition of his personal record before dismissing him, thus giving him an opportunity to go over his record with the proper official before such action is taken. We think this is a desirable provision in the rules and one that fully protects the employe and prevents his being dismissed in case carrier is in error.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1954.