

Award No. 2688

Docket No. 2426

2-L&N-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement and the June 5th, 1956 hearing transcript, the Louisville & Nashville Railroad Company, in the meantime, elected to unjustly dismiss Machinist J. E. Barksdale from its service on June 21, 1956.

That accordingly the Louisville & Nashville Railroad Company be ordered to restore this said employe of twenty or more years employment relationship to service with all rights unimpaired and with compensation for all time lost since the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: The Louisville & Nashville Railroad Company hereinafter called the carrier, first hired J. E. Barksdale thirty-five years ago in the capacity as a section hand for about two years, and the balance of the time as a machinist helper and a machinist.

The carrier elected to summon Machinist J. E. Barksdale hereinafter referred to as the claimant to stand trial at 8:00 A.M., May 29, 1956 (but the date thereof was mutually changed to June 5, 1956), on the charge of improper conduct while riding Passenger Train No. 1 from Louisville, Kentucky, on the night of May 11 to Birmingham, Alabama, arriving there on the morning of May 12, 1956, which is confirmed by the copy of letter dated at South Louisville, Kentucky, May 24, 1956, submitted herewith and identified as Exhibit A.

The trial (hearing) proceeded as above scheduled conducted by the carrier's general supervisor of diesels, and a copy thereof is submitted herewith and identified as Exhibit B. Nevertheless the carrier's Mr. Nelson, superintendent of South Louisville Shops, elected and ordered the claimant dismissed from the service effective at the close of his shift Thursday, June 21, 1956, which is confirmed by the copy of communication dated June 21, 1956 addressed to S. C. Snow and signed by W. D. Nelson, submitted herewith and identified as Exhibit C.

an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (Second Division Award 1323.)

"While under most circumstances off duty conduct is not a proper basis for discipline, it would be wholly unreasonable to say that an employe traveling on a train on free transportation from one point on his division to another point on that division where his home is located is not subject to discipline for improper conduct. Such conduct on carrier's property might prejudice the interests of the carrier and is at a time and under circumstances where it bears some relationship to his job.

"There was evidence adduced at the hearing which supports the charges against the claimant and the carrier's decision to impose discipline must be sustained. In view of the nature of the offense and considering the prior discipline record of the claimant involving similar offenses it cannot be said that the penalty was excessive." (First Division Award 15029.)

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 waived right of appearance at hearing thereon.

From the submissions and arguments of the parties, the Board finds that the evidence submitted at the investigation is in conflict. This Board, has said many times and now repeats, that it is in no position to resolve conflicts in the evidence. The credibility of witnesses and the weight to be given their testimony is for the trier of the facts to determine. If there is evidence of a substantial character in the record which supports the action of the carrier, and it appears that a fair hearing has been accorded the claimant, a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established. The claimant has failed to show such an arbitrary action in this claim. Reasonable grounds exist to sustain the determination of guilt made by the carrier.

The First Division in Award 15029 found that an employe may be disciplined for off duty conduct while traveling on a train on free transportation of the carrier from one point to another.

The Board finds that this claimant was employed by the carrier on June 4, 1947. The claimant had previously been employed by the carrier but resigned from the carrier's service in August of 1946. The Board also finds that the claimant had been disciplined by the carrier for being under the influence of alcohol and being insubordinate to his foreman in August, 1951, and that he was held out of service until December 6, 1951. Therefore, under the circumstances, the dismissal of the claimant from service is not unreasonable, arbitrary or excessive.

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1957.