

Award No. 4607
Docket No. 4527
2-AT&SF-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY (COAST LINES)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Electrician C. E. Jackson was unjustly deprived of his service and seniority rights, when he was discharged from his position on May 21, 1962.

2. That the Atchison, Topeka and Santa Fe Railway Company be ordered to:

(a) Restore Electrician C. E. Jackson to service with seniority rights unimpaired and compensation at his applicable rate for all time lost as a result of his dismissal.

(b) Restore all vacation and pass rights.

(c) Restore Hospitalization benefits and pay all dues and premiums from May 21, 1962.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 21, 1962, C. E. Jackson, hereinafter referred to as the claimant was regularly employed as an electrician by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, in the Coast Lines Shop Extension Electrical Department, Los Angeles, California. Claimant was a monthly rated employe with hours of assignment 7:00 A. M. to 12 Noon, 12:30 P. M. to 3:30 P. M., Monday thru Friday, and Saturday a stand by day.

On May 18, 1962, the claimant was notified to appear for investigation charging him with violation of Rules 19, 20 and 21, Form 2626 Standard General Rules for the Guidance of Employes issued 1959. The investigation was held on May 21, 1962. As a result of this investigation claimant was notified on this date of the investigation, that he was dismissed from service.

It will be observed that Rule 33½, paragraph (d), which is quoted in the preceding paragraph, provides that if the final decision shall be that an employe has been unjustly suspended or dismissed from the carrier's service, "such employe shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal." (Emphasis ours) Neither that rule nor any other rule of the Shop Crafts Agreement contemplates or provides payment of "dues and premiums" in connection with hospital benefits, as requested in Item (c) of the employes' claim quoted hereinabove and which are not wages. See in this connection Second Division Award No. 3883.

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.

Parties to said dispute were given due notice of hearing thereon.

The claimant herein was employed as an electrician in carrier's Coast Lines Shop Extension Electrical Department, Los Angeles.

As a result of an incident arising on May 18, 1962, claimant was notified on that same date that he should appear for investigation to determine his responsibility, if any, for being insubordinate and having a quarrelsome attitude on May 18.

The investigation was held on May 21, 1962. Claimant was found to be guilty of the charges mentioned above and was dismissed the same day. He now comes to this Board stating that he was unjustly deprived of his service and seniority rights and seeks to have these and his vacation and pass rights restored. Additionally, we are asked to restore Hospitalization benefits and to require the carrier to pay all dues and premiums for those benefits from May 21, 1962.

The record shows that claimant had performed approximately two hours of overtime work for which he had not been paid. This work had been done five to six weeks prior to May 18. Claimant's foreman and leadman were aware of these latter facts. When claimant asked his leadman about his "time" he was told that he must again talk with the foreman. Claimant, from the leadman's office, telephoned the foreman (14 blocks away) and in the course of the conversation he was advised to come to the foreman's office, along with the leadman, to straighten the matter out.

Claimant did not go to the foreman's office. He tells us that his foreman later told him that he (foreman) would come to the leadman's office. The foreman denies making such a statement. Not having the benefit of seeing the persons involved we are unable to determine which of them is being the most truthful. No corroboration is offered for either side on this point, therefore our findings concerning the charge of failure to obey instructions must be made from the circumstantial facts presented to us and from those facts application to the rules.

A review of the evidence submitted shows that claimant was not courteous and that he became quarrelsome. Moreover, he admits using profanity during his conversations with his foreman, leadman and with the trainmaster.

There are several reasons why we believe that this record contains insufficient evidence to support a finding that the claimant failed to obey instructions from proper authority when he failed to go to the foreman's office, if he, in fact, was unequivocally given such instructions; our principal reason being that we are not convinced that such an instruction as we have here would be in a matter pertaining to his respective branch of the service.

There can be no serious question of the carrier's right to direct its employes. Likewise it is recognized that the employes have a responsibility to obey proper instructions, to not be quarrelsome, to be courteous and to subordinate themselves to superiors. If an employe fails to accept and abide by these responsibilities to his employer he subjects himself to possible disciplinary action.

The question for our determination is—Were the acts of the claimant such that he be permanently suspended from carrier's service? We think not.

By failing to timely pay claimant for the overtime which he had worked in early April the carrier created the reason for the conversations between claimant and his superiors; and this delinquency creates more mitigating circumstances for claimant's admitted intemperate attitude. When this is viewed with the rapidity of the carrier's action (the events occurred and claimant was notified of an investigation on May 18, the investigation hearing and discharge was accomplished on May 21, 1962—and a weekend intervened) and when coupled with the fact that the trainmaster, who was not his supervisor, rather than the foreman, interrogated claimant during his lunch hour, we conclude that carrier's action was somewhat arbitrary.

Even though carrier acted somewhat arbitrary we cannot condone claimant's attitude or action. We are convinced that severe disciplinary action against him was called for but that the purpose of the discipline has been accomplished and claimant should be restored to service. Restoration should be with no compensation for time lost.

AWARD

Claim 1: Sustained.

Claim 2 (a): Sustained in part and denied in part in accordance with above findings.

(b): Sustained.

(c): Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.