

Award No. 5529

Docket No. 5374

2-WT-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Car Repairman, Joseph Figliozi, was unjustly dismissed from the service of the Washington Terminal Company May 20, 1966.

2. That accordingly, the Washington Terminal Company be ordered to return Car Repairman, Joseph Figliozi, to the service of the Carrier, with seniority and vacation rights unimpaired and compensate him for all time lost since May 20, 1966.

EMPLOYEES' STATEMENT OF FACTS: Joseph Figliozi, hereinafter referred to as the Claimant was employed as a Car Repairman with the Washington Terminal Company, hereinafter referred to as the Carrier. On April 7, 1966 the Carrier's Master Mechanic, Mr. McCabe, served notice to the Claimant that he was to report at Room 220, Union Station at 1:30 P. M. on Wednesday, April 13, 1966, for a hearing at which time he would be charged with; "Failure to perform his assigned duties on April 6, 1966 which resulted in the delays to trains RF&P 5, PRR 194, B&O 7, and Sou 41.", a copy of which is herewith attached and designated Exhibit (A). Hearing was postponed by mutual understanding until April 26, 1966 (Letter dated April 19, 1966, submitted as Exhibit C.) The hearing was held as scheduled and a copy of the transcript of hearing is herewith and designated Exhibit (D), pages 1 through 60. On May 20, 1966 the Carrier's Master Mechanic, Mr. McCabe, notified the Claimant that he had been found guilty as charged and that he was dismissed from the service of the Carrier, copy attached and designated Exhibit (E). Under date of May 24, 1966 the Claimant's case was appealed to the Carrier's Manager, who is the highest designated officer of the Carrier to whom such matters are subject to appeal, copy attached and designated Exhibit (F), pages 1 and 2. Carrier's Manager arranged for conference on appeal to commence on June 15, 1966. (Letter dated June 7, 1966 submitted as Exhibit F), conference was not completed on June 15, 1966, (Letter dated June 16, 1966 submitted as Exhibit H), therefore, the conference was recessed until June 27, 1966 and was concluded on July 13, 1966, (Letter dated June 30, 1966 submitted as Exhibit I) during these conferences the following was stipulated by the Carrier's Manager:

It is submitted that if there really hadn't been any chutes in any of the cars here, and if claimant knew this was so, he and his representative would not have neglected to come forth with the matter clearly and would have strenuously pressed it throughout the hearing. Again on this matter, Wallace's and Norman's testimony was never really challenged. Their testimony was properly accepted by the carrier, on balance, over what Norcia and the claimant himself said; it was clearly preponderant.

4. The Discipline was Justified.

No argument was advanced by the petitioner that the measure of discipline assessed was too harsh provided the claimant was guilty of the charge.

No citation of authority is necessary to show that insubordination is a serious offense which ordinarily warrants dismissal.

This claimant balked before at complying with the same instructions he disobeyed in this case. (See tr., pp. 17, 33-34.)

Claimant, moreover, was found guilty in another serious case of insubordination involving the misuse of blue flags at Union Station. (The case, which arose out of his refusal to obey a direct order given him by his foreman on March 24, 1965, is now on appeal before the Second Division as Case No. 7902.)

(While claimant's prior misconduct, similar to that here, was considered for the purpose of determining the amount of discipline to be assessed in this case, it could properly have been admitted and considered under rules of evidence in the present case for the purpose of tending to prove material questions here as to his motive, his intent, absence of mistake and possible pattern of conduct calculated to defy authority.)

Finally, that claimant's attitude towards his work and toward his supervisors has progressed from bad to worse was demonstrated simply by reference again to the hearing transcript, pp. 17, 34, 38 and to Carrier's Exhibits G and H.

Claimant's conduct was disruptive to the maintenance of proper discipline and to the maintenance of efficient operations. His dismissal was justified; it should not be disturbed.

(Exhibits not reproduced.)

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.

Claimant, a car repairman, was charged with: "Failure to perform your assigned duties on April 6, 1966, which resulted in the delays to trains RF&P 5, PRR 194, B&O 7, and SOU 41." After a hearing, Claimant was dismissed from the service of Carrier, effective May 20, 1966.

The sole issue to be determined in this dispute is whether or not Carrier had just and proper cause for discharging Claimant.

Carrier's position is that it was justified in imposing disciplinary dismissal from service inasmuch as Claimant is guilty as charged due to his failure to be at the cut or coupling point to set the air on the cars on track 31 in order for a train crew to pull the rear end of train 5 from the Mailhouse, which resulted in a delay of 10 minutes to said RF&P train 5, and thus causing delays to three other trains; that when the train crew arrived at track 31 to couple into the cars on said track, inasmuch as there wasn't a carman present, the train crew refused to complete the coupling until a carman was present and air was coming out of the north end of the car; that General Order No. 10 requires that air be attached to all cars in the Mailhouse at all times and that carman must be present at the coupling point in order to set the air prior to making the coupling of said General Order No. 10 is to permit cars to be moved without the B & M Department being required to remove mail chutes from cars.

The Organization's position is that Claimant, upon reporting for duty, found work backed up from the preceding shift; that Claimant carried out the Yardmaster's order to prepare track 31 for pulling and then notified the train crew brakeman; that Claimant complied with General Order No. 10 when he "set" the air brakes on the cars on track 31.

The determination of this dispute hinges on the interpretation to be given General Order No. 10.

The pertinent provision of said General Order No. 10 reads as follows:

"* * * Yard Trainmen in charge of movement must know that this warning is heard and understood, except, Yard Trainmen, when coupling cars to, or pulling cars from, Station Tracks 19 and 20 and on tracks in the mailhouse equipped with overhead conveyors which have auxiliary conveyors extending into the cars, will have overhead carman at cut or coupling point to set the air brakes on cars located on or remaining in track to avoid movement because of slack action; thereby eliminating the necessity of removing the conveyors from the car doors of the cars which are not being moved * * *."

The testimony adduced at the hearing indicates that the air brakes were set or down on the cars on track 31 but that the train crew refused to couple because of lack of air on the cars. There is disagreement between Carrier and the Organization as to what amounts in this instance to "setting the air brakes." Carrier's General Car Foreman, W. Norman, testified that if air is on the train, which it is supposed to be, the Carman can open the angle cock on the north end and by letting the air escape out of the train line, the brakes are then set.

Claimant admitted that he had been so instructed by Mr. Norman:

Q. In what manner have you been instructed to set the brakes in the Mailhouse?

A. Mr. Norman's instructions were that you open the angle cock on the north end and set the air, and I did that.

However, the Carrier's Asst. Foreman, J. J. Dwyer, testified that the angle cock on a car on track 31 was closed and that upon meeting Claimant told him to open angle cock, which Claimant did.

The evidence is clear that Claimant was not at the coupling at the time the train crew was ready to couple into cars on track 31.

It was Claimant's responsibility to see that the cars on track 31 were ready for coupling at the time the train crew was present for the coupling. He not only was not present at the coupling but failed to have the brakes applied in accordance with the instructions given to him by General Car Foreman Norman. Having failed to follow specific instructions given to him by Carrier's officers, Claimant must accept the consequences of being disciplined for failure to perform his assigned duties on the date in question.

In regard to the penalty assessed in this case, we feel that the action of the Carrier with respect thereto was excessive and unreasonable and therefore arbitrary so as to constitute an abuse of Carrier's discretion in imposing said penalty for said violation. The evidence in the record is undisputed that Claimant was properly performing his other duties at the time of the delay to train No. RF&P 5. There also was evidence introduced at the hearing that indicated that if the Asst. Foreman, J. J. Dwyer, was informed of the delay initially, the train delay time would have been reduced somewhat; further, we must take into consideration the nature and seriousness of the offense involved herein. Therefore, we feel that under the circumstances the disciplinary action of dismissal taken by Carrier in this instance was unduly harsh and severe.

Although the record does show that Claimant was suspended for a period of 30 days for refusing to comply with the instructions of a Car Foreman, we therefore are of the opinion that a fair and reasonable penalty in this instance, taking into consideration Claimant's past record, would be a one hundred eighty day temporary suspension from service from May 20, 1966. We feel that such a penalty would have sufficed to impress the importance of care upon both the Claimant as well as Carrier's other employees.

Thus, Claimant's dismissal from service is hereby set aside and Carrier is directed to reinstate Claimant with accumulated seniority and with compensation from the date when the 180 day suspension period ends; however, Carrier shall deduct any earnings that Claimant may have earned from the termination date of the 180 day suspension to the date of reinstatement.

AWARD

Claim partly sustained and partly denied in accordance with the foregoing opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.