

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

The Second Division consisted of the regular members and in addition Referee John P. Devaney when Award was rendered

PARTIES TO DISPUTE:

RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Shall Sheet Metal Worker T. S. Smith be compensated for all time lost?

FACTS.—T. S. Smith, a sheet metal worker, was employed by the carrier at its shops at Silvis, Ill. He was discharged on October 3, 1933, for distributing certain so-called cancellation slips on company property without permission, in violation of company's rules. He was reinstated October 12, 1933.

On June 12, 1934, Mr. Smith was suspended for insubordination and use of obscene language to Supervisor Wilson, who questioned him, for allegedly leaving his regular assignment of work.

The record shows that obscene language was used by both Mr. Wilson and Mr. Smith.

There is a very clear issue of fact as to whether Mr. Smith was at any time absent from his regular assignment of work without having reason so to be.

Mr. Smith was restored to service on August 15, 1934, having been out of service for a period slightly in excess of sixty days.

His claim is for lost time.

POSITION OF EMPLOYEES.—T. S. Smith, sheet metal worker, employed at Silvis Shops, was unjustly dismissed.

That the signing of a waiver for back pay was done under protest, in order that he might return to service.

That the waiver is not part of the rules and the working agreement that exists between the railroad company and its shopmen was not recognized by committee, as the shopmen's system general chairman so notified the railway company.

Mr. Smith has had approximately thirty years' service with the company. That his dismissal from service was not due to insubordination and use of obscene language or for being absent from his assigned work for any period of time, but was due to the fact that he had taken part in an organizing campaign then being carried on among carriers' employes by the standard unions. That reprimands directed by the officers of the company at Mr. Smith had to do solely with his activities on behalf of the standard unions, and in no instance had to do with his failure to properly perform his assigned tasks.

POSITION OF CARRIER.—That Mr. Smith was dismissed and suspended for just cause. That he signed the waiver on advice of Frank L. Mulholland, who acted as his representative, and who stated to the carrier officials that he had advised Mr. Smith to see his supervisors, meet them halfway and return to his job.

The contract in effect between shop employes and carrier in August, 1934, provided in Rule 34 that if it is found that employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unpaired and compensated for wage lost, if any, resulting from said suspension or dismissal.

That Mr. Smith's guilt was admitted, and that his demand for payment for time lost is not supported by the contract.

A compliance with the demand of the employe would take from the carrier the right of discipline, regardless of the circumstances.

The contention of the employe is not supported by the facts or the contract.

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.

FURTHER FINDINGS.—The questions to be decided are: (1) Was Smith unjustly suspended from service, as provided by Rule 34 of the agreement heretofore referred to? (2) If Smith was unjustly suspended or dismissed from service, did his signing of a waiver under the circumstances and facts in this case deprive him of compensation for wage lost? (3) Did the failure of Smith to act in accordance with the terms of Rule 33, which covers grievances, deprive him of his right to compensation in this case?

The file is a substantial one, filled with affidavits and counteraffidavits, and sharp conflicts of fact between the parties.

The issue of fact on the points heretofore referred to must be determined. The case is not the usual one of discipline as between an employer and employe.

We find that there was no just cause for suspending or dismissing Smith because of use of obscene language, or because he had absented himself unnecessarily from work to which he had been regularly assigned. The language used by both Smith and Wilson was improper, but because it was mutually indulged in there was no just basis for suspending or dismissing one of the parties to this unfortunate argument.

We find that the record does not sustain the claim that Smith had absented himself unnecessarily from work to which he had been regularly assigned.

We find that the signing of a waiver for wage lost done under protest is not binding on Smith and should not be given effect.

The remaining question is whether Smith's failure to act in accordance with Rule 33, which covers grievances, should deprive him of his right to compensation in this case. Rule 33 provides as follows:

"If an employee feels he has been unjustly treated or discriminated against, he may solicit the assistance of local chairman at point employed.

"At points where no Division Chairman is located, the local chairman may handle any matter up to and including the Master Mechanic, and if unable to effect satisfactory settlement, he shall refer the matter to his **Division Chairman.**

"In the event that the Division Chairman cannot effect a satisfactory settlement with the Master Mechanic or Superintendent of Shops, the Division Chairman may, if he deems it of sufficient importance, refer the case to the System General Chairman of his craft. The System General Chairman may, if he deems it proper, handle the matter up to and including the highest operating official designated by the railway. In case a satisfactory adjustment cannot be made, the matter may be referred to an Arbitration Board, composed of three men named by and representing the railway and three members named by and representing the Association, whose decision shall be final. All conferences will be granted within ten (10) days from date of application.

"Chairmen, who from time to time handle grievances, shall not be discriminated against."

Under this rule Smith might solicit the assistance of the local chairman, but was not obliged so to do. We find that he was not bound by this Rule in the instant case after ascertaining that the local chairman had already indicated that he was opposed to reinstating Smith.

Smith chose another channel through which to negotiate and adjust his difference with the carrier. He did it by direct conference through the assistance of the officers of the Railway Employees' Department.

If he was unjustly suspended or dismissed from the service there is no question as to his right to recover under Rule 34.

A discussion of the facts contained in this voluminous record and of the situation as it existed at the time of the dismissal in question would serve no useful purpose at this time.

AWARD

That T. S. Smith be restored to full rights, recognition of seniority, and he be paid for time lost between October 3, 1933, and October 12, 1933, and between June 12, 1934, and August 15, 1934.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1936.