

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES' DEPARTMENT,
A. F. OF L. (SHEET METAL WORKERS)
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES.—Dismissal of E. M. Garrity, pipefitter, Cedar Hill enginehouse, New Haven, Connecticut. Mr. Garrity's claim is for reinstatement, the continuance of medical care for his injury and pay for time lost in accordance with the provisions of Rule 31 and Rule 40, Mechanical Department Association agreement of the New Haven System.

POSITION OF EMPLOYEES.—E. M. Garrity, pipefitter, Cedar Hill roundhouse, New Haven, Conn., was injured at 10:00 A. M., July 18, 1935, during the performance of his duties. While applying feed pipe to water pump on engine 3347, he placed a drift pin in flange on pipe to hold it while he stooped down to pick up flange bolt from the floor. As he was arising from stooped position, pin slipped from pipe flange, allowing the flange to drop and strike him on the nose, causing a fracture and severe injury.

After accident he went to water fountain, where he met his foreman, who arranged for another employe to accompany him to the doctor's office, who after treating the injury, sent him to the hospital for further treatment. After his release from hospital on July 22, 1935, he was given four treatments and was sent to a specialist, who told him some bone would have to be removed account of the injury. He telephoned Claim Department, who advised him that he would not be given further treatment until after an investigation was held by the railroad officers as to the cause of injury.

Investigation was held in the general foreman's office at 2:00 P. M., July 30, 1935, at Cedar Hill roundhouse, and conducted by Master Mechanic MacIntosh, who attempted to substantiate rumors of gossip of certain employes as to how Garrity was injured. The transcript of the investigation is not a verbatim record, and that Garrity and sheet metal worker representative were denied the right to be present to hear the testimony of certain witnesses and were not permitted to question them. That there is absolutely no evidence whatsoever presented by the management during the investigation to justify the discharge of Garrity from the service for making fraudulent claim as to cause of his injury.

POSITION OF CARRIER.—E. M. Garrity was formerly employed as a pipefitter at Cedar Hill enginehouse, and was discharged for having indulged in "horse play" while on duty on company property and under pay, on July 18, 1935, and for having made false representation of having received personal injury while performing the duties assigned to him.

He acknowledged that he was the instigator in having engaged in "horse play" or fooling with James Hackett, a colored steam tender. It is alleged by Hackett, and substantiated by other witnesses, that as a result of the "horse play", or scuffling, Garrity was thrown to the ground and received injury to his nose. Hackett stated that in throwing Garrity off of him, he (Garrity) landed on the cement head first. Witnesses testify having seen Garrity getting up off the ground in front of Hackett. Garrity denied having received any injury to his nose as a result of his scuffle with Hackett, although he admits the possible truth of his having been seen picking himself up from the ground in front of Hackett. Garrity alleges that following the scuffle with Hackett, he went to the opposite side of engine 3347, and immediately thereafter, while applying a feed water supply pipe, a bolt slipped out, causing feed water pipe to drop down and the flange on pipe to strike him on the nose, fracturing same.

There were no witnesses to the accident which caused the injury as alleged by Garrity. The company holds that the injury to Garrity's nose did not

arise out of the course of his employment. When an employe indulges in "horse play" with fellow employes during the hours of his employment, with resulting injuries to himself, the injuries cannot be deemed to have any connection with his employment. In such a case, he has voluntarily departed from the duties of his employment and embarked upon an enterprise of his own, not contemplated by the terms of his employment.

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.

Garrity was dismissed for alleged fraudulent claims as to the manner in which he had received personal injury.

The carrier failed to prove their contention as to the manner in which the injury to Garrity occurred.

The hearing was not conducted in accordance with the rules of the agreement.

AWARD

Garrity will be reinstated with seniority rights unimpaired without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1936.