

Award No. 153

Docket No. 133

2-SP&S-MA-'37

**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:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

SPOKANE, PORTLAND AND SEATTLE RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: That Ray Cunningham, machinist, be reinstated at Portland on Spokane, Portland and Seattle Railway with seniority rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Ray Cunningham, machinist, was employed as a machinist by the Spokane, Portland and Seattle Railway for approximately twelve years. Following an investigation made on February 14, 1935, he was dismissed March 15, for failure to make proper repairs to an engine. At the request of Mr. Cunningham, a second investigation was held April 16. His dismissal was upheld.

POSITION OF EMPLOYEES: It was stated during the investigation by Mr. Cronkrite, engine-house foreman, that Mr. Cunningham had marked off work as being done, and after examination, it was shown that it had not been properly attended to, and that Cunningham was not a reliable machinist. He, having been in the service as machinist for twelve years, we contend that if he was unreliable and incompetent, he would surely have been discharged before all these years had elapsed.

It was stated in the investigation by Mr. Beitey, night engine-house foreman, that he had had a great deal of trouble with Cunningham in regard to his work prior to his dismissal on March 15. If this statement entered into the reasons for his discharge, these charges should have been set forth and he be given a chance to deny or affirm same.

We also claim after twelve years of service as a machinist, the penalty dealt was too severe and unfair.

Mr. Cunningham was endeavoring to get his work done on the engine mentioned when Mr. Beitey called him away from the engine. He had already pulled down some of the cellars and the helper was repacking them, and as cellar packing is included under helpers' duties according to Rule 1, paragraph (g) of the Spokane, Portland and Seattle Agreement, effective May 1, 1934, reading as follows:

" * * * Helpers' work also includes tool room attendant, cellar packers, machinery oilers, filling rod cups and lubricators, etc."

we contend that Mr. Cunningham was not in error in instructing his helper to examine cellars and signing for same after his helper reported them OK.

We also contend that, as there was no delay or extra expense incurred to the railroad, and as it was not proven by the investigation that, had the engine gone out, it would not have withstood the trip or that Mr. Cunningham's judgment as a mechanic would have been wrong, he should have been given more consideration.

The investigation shows that Mr. Cunningham was not instructed by his foreman to pull down cellar on account of box running warm, and when cellar was pulled down and grease examined, it was proven that said box had not been running hot to any extent. Had it been hot, the grease would have been burned.

POSITION OF CARRIER: The carrier complains that on February 13, Mr. Cunningham was assigned to repair a certain engine, that his instructions were to "Examine right No. 1 and No. 3 driving box grease cellar running very warm." After Mr. Cunningham had completed the job, the employes state that an examination disclosed that the engine was not running properly because "the binders on the grease boxes had not been dropped and on then removing cellars it was found that both ends of grease box were rubbing on journal, grease not feeding properly, grease box not free in cellar, nor screen free in grease box."

The carrier states that it is quite apparent from the evidence that the driving box cellars had not been adequately inspected and nothing had been done to remove the trouble reported and that the job was then properly taken care of by another employe.

The carrier also states that this failure to properly perform his duty was only one of a series of failures on the part of the same employe.

The carrier therefore contends that the discharge of Mr. Cunningham was with just cause and should not be disturbed.

OPINION OF THE DIVISION: The question in this case is purely one of fact. While the record is not sufficiently adequate to allow this Division to say positively that the facts concerning Mr. Cunningham's neglect of duties are true in their entirety, it seems reasonably clear that the charges against Mr. Cunningham have definite factual basis. There is no question but that the particular job in question was not done right. Moreover, there is considerable evidence of the fact that Mr. Cunningham had been guilty of neglect of duty on previous occasions.

There is no question raised concerning the fact that Mr. Cunningham was discharged for any other reason than neglect and inefficiency. No discrimination is shown. It is indisputable that he was discharged solely for the reasons stated by the carrier and that the case is purely a disciplinary one.

The control by the employer over the employe is the responsibility of management. This Division should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer.

For the reason that this is purely a disciplinary action, there being no proof of discrimination, and because the facts upon which this action was based can at best be said to be in conflict, we conclude that there is no ground for disturbing the decision of the management.

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.

That a careful examination of all the evidence discloses no adequate grounds substantive or procedural for disturbing the disciplinary action of the management.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1937.