Award No. 469

Docket No. 421

2-CStPM&O-FT-'40

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 75, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (FEDERATED TRADES)

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the Chicago, St. Paul, Minneapolis & Omaha Railway Company has violated the provisions of the Federated Shop Crafts' Agreement effective July 1, 1926, (and as amended) by suspending Machinist Wilfred Salmon, Boilermakers Steve Kododo and William Morgan from service for a period of five days account being injured in railroad company service, and that they be compensated by payment for time lost, and that similar cases that have occurred since these three employes were suspended be likewise compensated for time lost.

EMPLOYES' STATEMENT OF FACTS: Wilfred Salmon, machinist, St. Paul, Minnesota, shops and William Morgan, boilermaker, Sioux City, Iowa, shops, and Steve Kododo, boilermaker, St. Paul, Minnesota, shops were each suspended from service for a period of five days on account of being injured in railway company service. Rule 37, National Agreement for shop craft employes, effective October 20, 1919, read as follows:

> "An employe who has been in the service of the railroad thirty days shall not be dismissed for incompetency, neither shall an employe be discharged for any cause without first being given an investigation."

In connection with the application of Rule 37, National Agreement, the following interpretation of Rule 37 of the National Agreement was officially issued, clearly showing that Rule 37 does not provide for discipline by suspension:

"Mr. Lyman Delano, Federal Manager
Atlantic Coast Line Railroad
Wilmington, N. C.

Dear Sir:

Referring to your letter to Mr. W. S. Carter, Director, Division of Labor, in which you submitted, among others, a difference of

The carrier further disputes the committee's claim that it suspended the employes named for a period of five days "account being injured in railroad company service." The carrier states that it suspended these employes for a period of five days each, after it had been developed through a full and fair investigation that each of the above named employes was guilty of violation of certain specified safety rules in the performance of his duties.

The carrier would request, for reasons shown in its statement of facts and position, that your Board find it is not authorized to take jurisdiction in this case. However, the carrier would ask if the Board does take jurisdiction of this case over the protest of the carrier, that your Board then find that the carrier has not violated the provisions of Rule 34-T, nor 46-T, in suspending the employes named.

The carrier further asks your Board, if its two requests hereinbefore stated are denied, to still find that there has been no denial on the part of the committee that the employes violated rules and instructions of the carrier and that to award them pay for time not worked under such conditions is not justified nor equitable.

For all the reasons shown above, we ask that the claim be denied.

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.

These findings and opinions apply to Docket No. 421, Award No. 469 and Docket No. 422, Award No. 470. Although the facts are different, they involve one principle and consequently will be discussed together.

The question involved is over the right of the management to impose any system of discipline not provided for by the schedules. In Docket No. 421 there is involved a claim for five days' time lost through suspension. Docket No. 422 involves the institution of the Browne Discipline System of merits and demerits. A sufficient accumulation of the latter warrants discharge.

It is claimed both of these violate Rule 34-T of the agreement. There is nothing whatever in the agreement covering suspension.

Rule 34-T provides that an employe having served thirty days "shall not be dismissed for any cause without being given a hearing." Many schedules embrace disciplinary action including suspension as well as dismissal in comparable rules.

The contention of the organization here is that the carrier can do nothing other than discharge a man even for minor irregularities.

Rule 34-T is identical with Rule 37 of the National Agreement covering shop craft employes, effective October 20, 1919. The Assistant Director of the Division of Labor of the Railroad Administration issued an interpretation on this rule February 27, 1920, holding that it "does not provide for discipline by suspension."

The organization here involved has consistently opposed the use of suspension as a measure of discipline. When the agreement here involved was arrived at, no effort was made on the part of the management to have incorporated any provision for suspension therein. Until the instant cases arose there had been no practice of suspending as a matter of discipline for a definite number of days.

As to Docket No. 422, the Browne System was placed into effect by ex parte action of the carrier as of July 1, 1939, so far as the crafts here involved are concerned. It had been in effect in other parts of the carrier's organization, but the record does not show whether or not that may have been by agreement. It was placed into effect so far as other branches of the service were concerned, July 1, 1930. In 1934, the management indicated to the organizations here involved it was to be extended June 1, 1934, to the crafts here involved. They immediately protested the matter and it was left in abeyance until without further notice it was placed into effect July 1, 1939.

This the organization claims is not only a violation of Rule 34-T, but also of the Amended Railway Labor Act itself, in that it constitutes a change in working conditions not pursuant to agreement or notice.

We think both contentions are sound. We are not concerned with the question of whether suspension being milder than discharge and the Browne System being milder than either, they may be more advantageous to the employes than discharge. We are concerned with the question of what the contract provides and the conclusion is inescapable that these new forms of discipline cannot be instituted without some understanding with the organization concerning how they are to be operated.

The conclusions in this case are predicated on the rule and its history on this property.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. A. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1940.