

Award No. 724

Docket No. 688

2-B&M-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That Julian Lashua should be compensated at machinists' rate for four hours and eight hours, covering September 9 and 10, 1940, respectively, because of being removed from service prior to a hearing.

Further, we contend that the discipline representing seventy-two (72) demerits applied in this case should be removed from Mr. Lashua's service record because there is no provision of the working agreement covering discipline by the demerit system.

JOINT STATEMENT OF FACTS: There is an agreement in effect between the parties to this dispute. The effective date was April 1, 1937. Included in this agreement is the following rule:—

DISCIPLINE

Rule 31. No employee shall be disciplined or discharged without a fair hearing by a designated officer of the Carrier. Suspension in proper cases, pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time, prior to the hearing, such employee will be apprised of the precise charge against him and be given reasonable opportunity to secure the presence of necessary witnesses, and representatives of his own choosing.

If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal, less any earnings from other employment.

Discipline cases will be handled on appeal the same as outlined in Rule 29 of this Agreement.

If stenographic report of investigation is taken, the employee or his chosen representative will be furnished with a copy.

Julian Lashua is a machinist employed at the Concord locomotive shop. While attempting to flare off the lug of an air compressor bracket to make the bracket fit against the boiler, by using a burning torch, a groove was burned in the boiler side sheet.

Discipline cases will be handled on appeal the same as outlined in Rule 29 of this Agreement.

If stenographic report of investigation is taken, the employee or his chosen representative will be furnished with a copy.

As the joint statement of facts shows, Lashua, using a burning torch, burned a groove in the boiler side sheet of locomotive 1458 which was serious.

This occurred on September 9, 1940 and he was relieved from service on that day after working four hours and was paid for four hours.

Investigation was held the next day, September 10, 1940, and Lashua was allowed to resume work on September 11, 1940, having lost twelve hours' pay.

The first part of claim is that Lashua be compensated for this twelve (12) hours because of being removed from service prior to a hearing.

Rule 31, above quoted, is very specific where it says—"Suspension in proper cases **pending a hearing**, which shall be prompt, shall not be deemed a violation of this rule."

Suspension is allowed prior to hearing—that's what the rule says and means. The only question is whether this was a proper case in which to suspend a man.

We say it was a proper case, really a dischargeable offense—gross carelessness. Lashua admitted his guilt at investigation, at which general chairman was present.

The second part of the claim of the employees is that the discipline of seventy-two (72) marks should be removed from Lashua's record "because there is no provision of the working agreement covering discipline by the demerit system." Members of the Board will please note that it is not claimed that the seventy-two demerit marks were not warranted under the system, but that there is no provision in the working agreement covering discipline by demerit system.

The present discipline system of demerits was in force about thirty-eight years at the time of this occurrence, which included many years when System Federation No. 18 held the agreement prior to July 1, 1922, and there was no question about it then and there cannot properly be now.

What system of discipline shall be used is for the management to decide. No agreement we have with any of the numerous crafts or classes contains a negotiated rule covering what system of discipline shall be in force.

Rule 31 clearly recognized that men will be disciplined and discharged. Therefore, provision is made for hearings, etc., and what will be done in the event of unjust suspension or dismissal.

The demerit system is much less burdensome to the employee and his family than the actual suspension system.

Dozens of discipline cases have been handled by the various divisions of the National Railroad Adjustment Board where it was shown that the demerit system was in force, and no evidence of any agreement between the organization involved and the railroad.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

There is no dispute in the facts in this case. Julian Lashua is a machinist employed at the Concord locomotive shops. Due to his negligence or carelessness while using a burning torch to flare off the lug of an air compressor bracket, he burned a groove in the boiler side sheet, which caused damage in the amount of several hundred dollars and delayed the use of the engine for a period of better than fifteen (15) days. Lashua was removed from service and a hearing was held on the following day. He was returned to service after losing one and one-half days' work and was given seventy-two (72) demerits for burning the boiler.

There is no question in this case but what Mr. Lashua was suspended solely for the reasons stated by the carrier and that the case is purely a disciplinary one. No discrimination is shown. The hearing was held immediately.

Rule 31 provides:

"No employe shall be disciplined or discharged without a fair hearing by designated officer of the carrier. Suspension in proper cases pending hearing, which shall be prompt, shall not be deemed a violation of this rule."

The rule does provide for suspension in proper cases. It does not give to the carrier the right to suspend in every case, but limits that right to proper cases. By proper cases must be meant cases of a serious nature, not a small infraction of the rules or of the current agreement.

The question before us is, was this a proper case for suspension? There is no question but that the damage was due to the carelessness of the employe. It involved a serious loss to the carrier and under the record we find was a proper case for suspension. There is nothing in this record that justified the giving of seventy-two (72) demerits to Mr. Lashua.

AWARD

Claim for compensation will be disallowed, but the seventy-two (72) demerits will be cancelled, erased and removed from Mr. Lashua's service record.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.