

Award No. 1003

Docket No. 933

2-IC-FO-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

ILLINOIS CENTRAL SYSTEM

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier unjustly discharged and thereby deprived Lift Truck Operator W. J. Poyner of 13 days work.
2. That in consideration of the aforesaid, the carrier be ordered to pay W. J. Poyner for time lost on November 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23 and 24, 1942.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. J. Poyner was employed as a lift truck operator at the carrier's Paducah, Kentucky shops. He entered the service of the carrier on April 14, 1934.

The claimant employe, in the course of performing his regular duty on August 29, 1942, was seriously injured by another employe at about 9:40 A. M.

The injury of the claimant was investigated beginning at 9:00 A. M. of September 26, 1942, and after which the claimant was discharged. A copy of the transcript of investigation, although alleged to be incorrect in certain respects by the employes, is identified and submitted as Exhibit A.

The committee contends that the claimant was discharged without just cause; that he should be reinstated with his seniority unimpaired and paid for time lost.

The carrier advised the committee that reinstatement of the claimant would be given consideration when released by the hospital department.

The claimant was released on November 9, 1942, and he was available, ready and able to perform his regular duty after that date.

The carrier restored the claimant to service on November 25, 1942, but without pay for time lost, and has since declined to pay the claim.

The controlling agreement is dated effective April 1, 1935, amended April 1, 1939.

POSITION OF EMPLOYEES: As indicated in the employes' statement of claim, Mr. W. J. Poyner, lift truck operator at Paducah Kentucky, was unjustly discharged and deprived of thirteen days' work.

Many personal injuries received in fights between employes have forced the carrier to take a stern attitude toward scuffling and brawling. Quarreling among employes provides a constant discipline problem and the carrier cannot be expected to weigh the niceties of degree of fault, aggressor party, provocation, etc. The only rule which can prevent recurrences of the type of injury sustained by Mr. Poyner is to assess severe discipline against both of the parties engaged in the quarrel. The carrier followed such a course as a result of eye-witness accounts which indicated both parties to be at fault and the carrier therefore requests that this claim be denied without qualification.

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.

The evidence of record in this proceeding supports the following conclusions: that the claimant was not responsible for the fight of August 29, 1942 in which he was seriously injured; that he was dismissed from service on September 26, 1942 without just cause; that he was entitled to be restored to service upon release by the hospital department on November 9, 1942; and that in these circumstances he was unjustly deprived of 13 days' work, as specified in the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of March, 1944.