

Award No. 1191
Docket No. 1126
2-IGN(SAU&G)-MA-47

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (MACHINISTS)

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY,
(SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY)
(Guy A. Thompson, Trustee)

DISPUTE: CLAIM OF EMPLOYEES: 1. That Machinist J. E. Morin was unjustly suspended from the service on August 19, 1946, and also was unjustly discharged from the service on August 29, 1946.

2. That accordingly the carrier be ordered to reinstate Machinist J. E. Morin to all service rights, and to pay for all time lost retroactive to August 19, 1946.

EMPLOYEES STATEMENT OF FACTS: On August 21, 1945, Machinist J. E. Morin, hereinafter referred to as the claimant, was employed as such by the carrier on the 4 P. M. to 12 midnight shift at San Antonio, Texas, under the supervision of J. G. Campbell, roundhouse foreman on said shift.

Mr. W. P. Vandiver was roundhouse foreman on the 12 midnight to 8 A. M. shift, and on August 19, 1946, he came down to this roundhouse about 10:30 P. M. to get the lineup and turnover of power, finished and unfinished, from Roundhouse foreman Campbell. Between 10:30 and 11:30 P. M. on this date, third shift roundhouse foreman Vandiver proceeded to criticize the claimant for the manner in which he was performing the work assigned to him by Roundhouse Foreman Campbell, and consequently, third shift Roundhouse Foreman Vandiver suspended this claimant from the service about thirty minutes before the end of his shift, or at about 11:30 P. M. The next day, August 20, the claimant was charged with insubordination and his hearing was set for the next day, August 21, at 3 P. M. by General Roundhouse Foreman T. V. Anderson. This factual statement is substantiated by the copies submitted of charges and the copy submitted of hearing record, respectively, identified as Exhibits 1 and 2.

On August 29, 1946, this claimant was discharged from the service of the carrier, which is substantiated by the copy submitted of form letter addressed to the claimant by Superintendent Cook, identified as Exhibit 3.

This claimant's case has been handled in accordance with the collective controlling agreement, effective September 16, 1944, up to and with the highest

With reference to Paragraph 2 of the employees' ex parte statement of claim reading:

"That accordingly the Carrier be ordered to reinstate Machinist J. E. Morin to all service rights, and to pay for all time lost retro-active to August 19, 1946."

In view of the fact that the record shows conclusively that Mr. Morin, without justification, was guilty of insubordination toward his superior officer while on duty the night of August 19, 1946, there is not, of course, any basis whatever to justify a decision ordering the carrier to reinstate Mr. Morin as requested by the employees. Rule 17(a) (Paragraph 5), quoted in carrier's statement of facts, provides that:

"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."

The record in this case clearly precludes any basis or justification for the position that Mr. Morin "has been unjustly suspended or dismissed from the service". It is the position of the carrier, therefore, that the request of the employees for the reinstatement of Mr. Morin to service with pay for time lost must 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 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.

We find here a case of an employee being insubordinate to a foreman or subordinate official who was not in direct supervision of the work the employee was performing when the charge was made. It is an unusual case and from the evidence we find discipline was justified but not to the extent of dismissal from the service.

AWARD

That Machinist J. E. Morin be reinstated in the service of the carrier with seniority rights unimpaired but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1947.