

Award No. 1195

Docket No. 1118

2-L&N-FT-'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. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (FEDERATED TRADES)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(NASHVILLE TERMINALS COMPANY)**

DISPUTE: CLAIM OF EMPLOYEES:

- (a) That discipline by record suspension is improper under the current agreement.
- (b) That the service records of Carmen Helpers W. T. Kern and Charles Capley be cleared of the discipline by record suspension assessed against them on September 24, 1946.

EMPLOYEES' STATEMENT OF FACTS: The seniority status of these involved carmen helpers on the carmen helpers' seniority roster are:

Name	Seniority Dating
W. T. Kern	November 20, 1944
Charles Capley	September 19, 1939

On September 24, 1946, a record suspension of thirty (30) days was assessed against the service record of W. T. Kern.

On September 24, 1946, a record suspension of thirty (30) days was assessed against the service record of Charles Capley.

This dispute has been handled in accordance with the current agreement effective September 1, 1943, up to and including the highest designated carrier officer to whom such matters are subject to appeal, with the result that such carrier officer has declined to adjust this dispute.

POSITION OF EMPLOYEES: It is submitted that there is nothing in Rule 33, reading:

"No employe shall be disciplined without a fair hearing by designated officers of the carrier. Suspension in proper cases pending a hearing, which will be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and his Local Chairman will be apprised of the precise charge and given reasonable opportunity to secure the presence of neces-

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.

There is no question in this case as to the right of the carrier to discipline employes. That right is conceded in the negotiated rule covering discipline. The main question is, what is the meaning of the term "discipline" as used in the rule, or what form of discipline is comprehended by the rule.

The carrier had in effect a system of discipline which they contend is not in conflict with the discipline rule. The employes contend that this system of discipline is not provided for in the rule.

The discipline rule in the current agreement reads in part as follows:

"No employe shall be disciplined without a fair hearing * * *."

It is clear from the contentions made by the respective parties that they do not have a mutual understanding as to what is meant by the term "discipline" as used in the rule.

There is not sufficient evidence from the parties in this submission to permit this Division to intelligently interpret the rule in question as presented in this dispute.

AWARD

Case remanded in accordance with the above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1947.