

Award No. 1211
Docket No. 1138
2-MC-FO-'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. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (FIREMEN & OILERS)

MICHIGAN CENTRAL RAILROAD
(The New York Central Railroad Company, Lessee)

DISPUTE: CLAIM OF EMPLOYEES: That Stationary Engineer H. O. C. Washington was unjustly deprived of his service rights on and since March 5, 1945, and that accordingly the carrier be ordered to reinstate him to all service rights with pay for all the time lost retroactive to said date.

EMPLOYEES' STATEMENT OF FACTS: Stationary Engineer H. O. C. Washington, hereinafter referred to as the claimant, was employed by the carrier at the passenger terminal power plant, Detroit, Michigan, on August 1, 1935, and remained continuously in the service as such since that time until March 5, 1945.

The claimant's regularly assigned hours were from 12 midnight to 8 A. M., and during this shift he was in complete charge of the aforesaid power plant, with authority to admit no one to this power plant except employes possessing the necessary identification, which is affirmed by employes' Exhibit A.

Sunday, March 4, 1945, Chief Engineer Murch, accompanied by Stationary Boiler Inspector Hale and Company Police Officer Vonderworth, secretly entered this power plant through a locked door, and concealed themselves therein from 4 A. M. to 4:45 A. M., spying upon the claimant.

Monday, March 5, 1945, Chief Engineer Murch suspended this claimant from the service, filed charges against him and therein set hearing date at 10 A. M. March 7, copy of which is submitted and identified as Joint Exhibit A.

Chief Engineer Murch served as the claimant's prosecutor at the hearing and as the judge of that record. This is affirmed by the submitted copy of the hearing transcript record, identified as Joint Exhibit B and the submitted copy of letter identified as Joint Exhibit C, dated March 13, 1945.

The agreement dated effective February 20, 1940, and Rule 18 thereof as amended, effective June 15, 1943, are controlling.

the duties of so important a position. There was but one course of action to be taken in the circumstances, and that was to remove him from the position of stationary engineer.

The employes have charged that Murch was "the claimant's prosecutor at the hearing and * * * judge of that record," but the fact is that even though Murch presided at the hearing, he was not the sole witness against Washington, and another important fact is that the superintendent of equipment reviewed the record on appeal and sustained the dismissal, and carrier's labor relations committee thoroughly reviewed the evidence and affirmed the discipline.

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 in this case would indicate that discipline by dismissal based on the three charges specified was perhaps to a degree unjust, yet the record shows that some discipline was justified.

The evidence does not show that the employe was discriminated against because of his also being a representative of the employes' craft or class, nor that the management was, so to speak, "gunning" for this employe. A check of his work could only be made at night on the shift on which he was working.

AWARD

Claim for time lost is denied. Mr. Washington is given the option of returning to his employment in the power plant with seniority unimpaired.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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