

Award No. 1248
Docket No. 1197
2-AT&SF-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (EASTERN LINES)

DISPUTE: CLAIM OF EMPLOYES: That Carman John S. Buno was unjustly discharged on April 21, 1947, and that accordingly the carrier be ordered to reinstate him to all service rights with compensation for all time lost retroactive to the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: John S. Buno, hereinafter referred to as the claimant, was regularly employed by the carrier at Corwith, Illinois. He entered the service of the carrier February 7, 1941, and was regularly assigned as a carman from 7:30 A.M. to 4:00 P.M. at the time he was removed from the service on April 21, 1947.

On April 8, 1947, the claimant was required to submit to a question and answer investigation, a copy of which is submitted and identified as Exhibit A.

On April 21, 1947, this claimant was notified by Car Foreman A. Allison that he was being removed from service at the close of his shift that day. Copy of discharge notice is submitted and identified as Exhibit B.

The discharge of this claimant has been handled in accordance with the current agreement, effective August 1, 1945, up to and including the highest designated carrier officer to whom such matters are subject to appeal, with the result the claim has been denied, as evidenced by letter addressed to the undersigned by Mr. S. C. Kirkpatrick, dated December 13, 1947, copy of which is submitted and identified as Exhibit C.

POSITION OF EMPLOYES: It is respectfully submitted that within the meaning of the provisions of Rule 33(a) reading in pertinent part—

"Should an employe whose wages and working conditions are governed by this Agreement believe that he has been unjustly dealt with, or that any of the provisions of this Agreement have been violated, he or the duly authorized representative of his craft shall take the case . . ."

the claimant was an employe subject to the controlling agreement, that he believed he was unjustly dealt with and that the agreement was violated when he was removed from service at the close of his shift April 21, 1947.

It is submitted that the obvious intent of Rule 20, captioned ABSENCE FROM WORK, reading—

telephone service to facilitate the receipt of such information, but the fact that the claimant employe made no attempt to comply with this rule should in itself be evidence of the most convincing sort that the claimant employe was not unjustly dismissed from the service of the carrier.

There is another rule in the current and mutual agreement between the carrier and its shop crafts' employes designated as Rule 19(a) which requires the carrier to grant a leave of absence for a limited time with privileges of renewal when the requirements of the service will permit, and is obligated by this same rule to grant a leave of absence in case of sickness or important business matters.

The claimant employe paid no attention to Rule 19(a) of the current and mutual agreement. The wanton disregard of Rules 19 and 20 of the current agreement certainly do not support the allegation of the organization that the claimant employe was unjustly dismissed from service.

The mutually agreed upon interpretation of Rule 19(a) makes it all the more apparent that if the claimant employe had a situation which would not permit him to report for work, he either should have made prior arrangements with his immediate supervisors for a leave of absence or some other working out of his problem which would not have left the carrier's local officers in the position of expecting him to report for work on each working day, and then failing to do so.

The investigation notes, a copy of which is submitted as Exhibit A, clearly indicate from the questions asked by Master Mechanic H. L. Price, and the claimant employe's replies to the questions, that no attempt was made to pry into Mr. Buno's personal affairs. The fact that Master Mechanic H. L. Price accepted the claimant employe's answers at their face value should be further evidence that there was no disposition on the part of the carrier to bring about the unjust dismissal from the service of the employe under investigation.

The claimant employe had been shown every consideration and his immediate supervisors had been more lenient with him than the circumstances would seem to justify. He freely admitted that he had absented himself from duty without permission. His representatives did not deny this.

The carrier feeling that the dismissal of this man might bring him to realize his shortcomings, and having no wish to do more than maintain a satisfactory standard of discipline, offered to reinstate the employe on a leniency basis, which offer the organization refused to accept. Finally and as clearly evidenced by Mr. Kirkpatrick's letter to General Chairman Tyson on December 13, 1947, reproduced in its entirety in the carrier's statement of facts, Buno's failure to perform service subsequent to November 17, 1947, is clearly of his own making, he evidently having decided to risk the loss of his seniority and employment rights in an attempt to collect pay for not working.

In closing, the carrier wishes to reaffirm that the allegation of the organization that this man was unjustly dismissed from the service of the carrier is absolutely without foundation and is of the opinion that your honorable Board can have no other recourse than to deny this claim in its entirety. Further, the instant dispute is clearly without merit or schedule support and 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 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.

After a review of the record, and without prejudice to the position of either party in other or future cases, the Division holds that Carman John S. Buno should be reinstated with seniority rights unimpaired, but without pay for time lost.

AWARD

Carman John S. Buno shall be reinstated with seniority rights unimpaired. Claim for compensation dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1948.