

Award No. 1281

Docket No. 1098

2-FEC-FT-'48

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. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Federated Trades)**

**FLORIDA EAST COAST RAILWAY COMPANY
(Scott M. Loftin and John W. Martin, Trustees)**

DISPUTE: CLAIM OF EMPLOYEES: That discipline by demerit marks is improper under the current agreement, and that accordingly the carrier be ordered to clear the service record of Motor Car Maintainer W. H. Hunter of said demerits assessed against him on January 5, 1946.

This dispute was considered by the Division May 16, 1947. It was remanded to the parties with a statement that it was clear from their contentions that they did not have a mutual understanding of what was meant by the term "discipline" as used in the rule and that there was not sufficient evidence in the submission to permit the Division to intelligently interpret the rule in question.

The case was remanded in the hope that the parties through further conferences might be able to settle the dispute. The dispute was again referred to the Division by Mr. R. G. Smith, President, System Federation No. 69 (letter undated), with a request for decision on the claim or question originally submitted, advising that the parties in conference held April 8, 1948, had been unable to dispose of it.

The President of the Railway Employees' Department, A. F. of L., under date of June 22, 1948, in transmitting the submission made by System Federation President Smith, referred to it as an ex parte request for an interpretation to Award No. 1194.

Award No. 1194 reads:

"Case remanded in accordance with the above findings."

plainly discernible recognition that the Second Division is without authority to place the parties to the dispute in a different position than that in which they placed themselves by negotiation, that it can only interpret agreements and not make or amend them.

The Employes have introduced in their submission new argument but not one iota of new evidence to support it because, as has been shown, all evidence in the case refutes their contention. They could not support their claim in Docket No. 1098 and they are in exactly the same situation today. The evidence proves their claim to be totally without merit and unsupported by the controlling agreement.

The request for an "interpretation" should be denied, and the normal functioning of collective bargaining should be left undisturbed.

FLORIDA EAST COAST RAILWAY COMPANY
Scott M. Loftin and John W. Martin, Trustees

By

C. L. Beals
Chief Operating Officer

FINDINGS: The following findings and award are designed to finally dispose of the proceeding:

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 Division does not feel, in view of what has transpired since the award was made, that an interpretation of the award will dispose of the dispute and it is therefore decided that it is necessary to pass upon the claim or question as to whether discipline by demerit marks is improper under the current agreement.

The dispute, not having been disposed of by the parties after it was remanded, is now before the Division for a decision or award. It is as unsettled today as it was in May, 1947.

It is stated, and not denied, that the mechanical officer of the carrier is in agreement with the employes' representatives as to the interpretation or meaning of the discipline rule and that the discipline rule as applied to approximately one thousand mechanical department shop craft employes precludes discipline by demerit marks.

The same representatives of the one thousand employes in the shops, also represent, under another agreement, with similar discipline rule, some twenty employes known as roadway shop forces. An officer of the carrier other than the officer in the mechanical department contends the discipline rule covering the roadway shop forces should have a different interpretation, namely, that discipline by demerit marks to those employes is not precluded by the rule.

The chief operating officer agrees with the position taken by his two subordinates, namely, that it is proper to have two different interpretations of practically the same rule for the reason that the two groups of employes are in different departments of the railroad even though they are represented by the same general committee.

The carrier contends that the system of discipline in effect for mechanical department shop forces and for roadway shop forces is not now, nor was

it ever, a matter of agreement and therefore it is entirely natural and proper that one system of discipline may apply to the mechanical department shop craft forces and another to the roadway shop forces.

The Division cannot agree that it would be entirely natural for a committee representing employes in both departments of the carrier to accept two different interpretations of what may be termed a uniform or standard rule, simply because the employes happen to be on different departmental payrolls or supervised by different officers of the carrier.

The natural thing would be, as the committee contends here, to have one interpretation of the discipline rule for all of the employes it represents regardless of the interpretation or understanding that representatives of other employes may have under similar rules. It may well be that the committee representing the larger group of employes in the maintenance of way or roadway department prefer, or do not object, to an interpretation of the discipline rule different from that contended for by the committee representing the employes here involved.

The board finds there is no justification for imposing a different interpretation of the discipline rule for the twenty employes in the roadway shop forces from that covering approximately one thousand employes in the mechanical department shop crafts, all represented by the same general committee.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1948.