

Award No. 1301
Docket No. 1218
2-AT&SF-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
—COAST LINES—

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Carman Mike Katsikaris was unjustly dismissed from the service at the completion of his shift on June 30, 1947, and that accordingly the carrier be ordered to reinstate this employe to all service rights with pay for all time lost since the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: Mike Katsikaris, hereinafter referred to as the claimant, was employed by the carrier as a carman at China Basin shop, San Francisco, California, with a seniority date of June 9, 1941.

The claimant's regularly assigned hours of work were from 7:30 A. M. to 12 Noon, and 12:30 P. M. to 4 P. M., six days per week exclusive of Sundays.

The claimant was summoned by the carrier to stand investigation beginning at 10 A. M. on May 29, 1947, on account of having been placed under arrest on April 23, 1947, by city police and convicted in the Police Municipal Court on a charge of battery on May 27, 1947, occurring in the claimant's own home Sunday, April 20, 1947, and copy of this investigation transcript is submitted, identified as Exhibit A.

The carrier discharged the claimant effective at 4 P. M., the close of his shift, on June 30, 1947, for improper conduct, and a copy thereof is submitted, identified as Exhibit B.

The agreement effective August 1, 1945, is controlling.

POSITION OF EMPLOYES: It is submitted that the dismissal of the claimant on June 30, 1947, Exhibit B, is not sustained by the investigation record, Exhibit A. In other words, the carrier dismissed this claimant without cause arising out of his employment under the current agreement.

The action of the carrier against this claimant is not authorized by the current agreement, and even if there were any provision therein which would give the carrier control over any employe outside of his employment, it is inconceivable that this Division would uphold the carrier's dismissal of

23. M F S After your trouble on Sunday, April 20, you worked the following Monday?
M K Sure.
24. M F S Did you tell your foreman or any of the men about the trouble you had?
M K No not exactly. Did not want to say anything much because I did not know how the thing happened.
25. M F S Did you tell them you had trouble?
M K I told them I had some little trouble, did not know exactly what it was to give any statement.
26. M F S Did you plead guilty to any charge up there?
M K No, sir.
27. M F S Did you plead not guilty?
M K Yes.
28. M F S But you later were found guilty by the Court?
M K Yes.
29. M F S You had to pay a fine?
M K Yes.
30. M F S How much fine?
M K \$200."

As has been set forth in the foregoing, the carrier complied fully and literally with Rules 33 (d) and 33 (e) of the current agreement pertaining to grievances and discipline; moreover, it was not only proven but as well admitted by Mr. Katsikaris that he was convicted of and paid a fine for a crime committed, hence, further comment on those phases seems unnecessary.

The dismissal of Mr. Katsikaris was certainly justified under the circumstances, as a carrier cannot and should not be required to retain in its service, without censure, an employe who has been convicted of a violation of the laws of the land. While the charge on which Mr. Katsikaris was convicted was a serious one and would perhaps have justified the carrier in declining a request to return him to service on any basis, nevertheless, in view of his record of service, Mr. McCarty, general manager, was willing to return him to service on a leniency basis as clearly evidenced in his letter of December 23, 1947, to General Chairman Tyson, reproduced in its entirety in the carrier's statement of facts. Mr. Katsikaris' failure to perform service subsequent to December 23, 1947, was, no doubt, brought about by conclusion having been reached to risk the loss of his seniority rights in an attempt to collect compensation 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.

The carrier's Rule 7, Circular 112, makes sense only if the word "crime" is interpreted to mean a serious violation. Clearly, the company itself does not construe misdemeanors to fall within the prohibitions of the rule, for otherwise, employees would be discharged for minor traffic violations. To consider all slight infractions of the law as a violation of Circular 112, would be to unduly distort the regulations beyond their true intent and purpose.

In the instant case, the offense for which Mike Katsikaris was convicted was not of grave character, and it did not properly subject him to dismissal from the carrier's service. Accordingly, it is concluded that Carman Mike Katsikaris was unjustly discharged on June 30, 1947, and he should be reinstated with seniority rights unimpaired, and remunerated for all time lost since June 30, 1947, with deductions for wages, if any, earned in other employment during the period for which he is awarded back pay.

AWARD

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1949.