

Award No. 1323
Docket No. 1256
2-MP-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY AND TRUSTEE

DISPUTE: CLAIM OF EMPLOYEES: (a) That Carman T. R. Flowers was unjustly suspended from the service effective 1:20 P. M. May 23, 1948, and unjustly discharged from the service on June 8, 1948, under the current agreement.

(b) In consideration of the foregoing the carrier be ordered to reinstate this employe with all service rights, and compensate him for all time lost since 1:20 P. M. on May 23, 1948.

EMPLOYEES' STATEMENT OF FACTS: Carman T. R. Flowers, hereinafter referred to as the claimant, has been continuously in the service of the carrier at Coffeyville, Kansas, since August 26, 1933, in a capacity of carman helper, or a car repairer, and lastly as a car inspector, with regular assignment of hours from 7 A. M. to 3 P. M. on May 23, 1948.

The carrier ordered this claimant taken out of service about 1:05 P. M. on May 23, 1948, pending a hearing. On May 25, 1948, the carrier charged the claimant with drinking intoxicating liquor and being in an intoxicated condition on duty May 23, 1948, a copy of which is submitted and identified as Exhibit A.

The claimant's hearing was held on June 4, 1948, instead of June 1, 1948, as stipulated in Exhibit A, by mutual understanding between the parties, and a copy of the hearing transcript record is submitted, identified as Exhibit B, consisting of Sheets 1 to 17 inclusive.

On June 8, 1948, the carrier dismissed the claimant from the service, and a copy of this transaction is submitted, identified as Exhibit C.

The agreement effective July 1, 1936, as subsequently amended in the reprint of September 1, 1946, is controlling.

POSITION OF EMPLOYEES: It is submitted that in consideration of the foregoing statement of dispute and the statement of facts, in conjunction with Exhibits A, B and C, submitted, your Division is called upon to resolve whether this claimant was unjustly or justly suspended from the service pending a hearing, and whether this claimant was unjustly or justly dismissed from

"American railroad management is admonished by law, good conscience, and sound business sense, to conduct their operations safely, efficiently, and economically. To these ends untold millions of dollars have been spent. Millions upon millions have been spent to enhance the safety of operations, alone. Great sums have been spent for the sole purpose and object of minimizing or neutralizing the hazards of the human equation—man failures, but these measures and devices contemplate only a normal employe personnel. There is no way to forefend against the hazards of an employe in abnormal condition, except by alert supervision. Willful indulgences, that lead to abnormal conduct, can only be dealt with as a matter of discipline . . ."

In conclusion, carrier wishes to point out that the discharge of Mr. T. R. Flowers, based upon the evidence produced at the investigation held on June 4, 1948, at Coffeyville, was the only proper course open to this carrier. To do otherwise would be to ignore the most glaring example of open and flagrant violation of the terms and conditions of the employment agreement between the parties to this dispute; to ignore conduct while on duty which has from time immemorial been considered and acknowledged on all railroads by management and employes alike to constitute good and sufficient grounds for dismissal from service. The carrier is responsible for the safe, efficient and orderly conduct of the business in which it is engaged and if it be not permitted nor allowed to exercise proper discipline among its employes, then how can the carrier properly discharge that responsibility?

Based on the facts contained herein, the claim of the organization should 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.

There is undoubtedly room here for differences of opinion whether in view of claimant's past record and the circumstances of this case that outright dismissal from service was dictated. Be that as it may, it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1949.