

Award No. 1389

Docket No. 1312

2-UP-FO-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Firemen and Oilers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Coal Chute Heaver Emmett R. Elliott was unjustly disciplined when the carrier declined to reimburse him for all time lost for the period of May 10 to June 7, 1949, inclusive, and that accordingly the carrier be ordered to compensate him for all of said time lost.

EMPLOYES' STATEMENT OF FACTS: Emmett R. Elliott, hereinafter referred to as the claimant, was employed by the carrier at Kearney, Nebraska, on October 14, 1941, as a coal heaver, and in addition to filling other assignments he worked as such continuously on the 8 A.M. to 4 P.M. shift from December 25, 1947, until sometime in the forenoon of May 10, 1949. This is affirmed by copy of the claimant's personal record, submitted and identified as Exhibit A.

This claimant was chosen by his firemen and oiler fellow workers as local chairman, which position he had held for about three years. In the course of concluding his duties as local chairman—discussion of a grievance with Mechanical Foreman H. D. Robinson—said foreman viciously attacked the claimant and immediately thereafter suspended him from the service at about 10 A.M., May 10, 1949, thereby causing the master mechanic to prefer charges against him as set forth in copy of letter addressed to the claimant, dated also May 10, 1949, submitted and identified as Exhibit B.

The claimant's hearing by agreement between the parties was held at 10 A.M. on May 13, 1949, and a copy of the transcript of said hearing is submitted and identified as Exhibit C.

On June 6, 1949, Mr. O. J. Robinson, master mechanic, agreed to restore the claimant to service without prejudice to settlement thereafter of the question of pay for time lost, and the claimant resumed work on June 8. This is affirmed by copies of letters exchanged between the acting general chairman and the master mechanic, respectively, dated June 11 and 24, 1949, submitted and identified as Exhibits D and D-1.

The agreement effective February 1, 1944, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the carrier imposed upon this claimant unjust discipline when the highest designated carrier officer

"A—* * * I never hit that man and when he came back again, I hit him with my left hand. There was no marks on that man whatsoever. I do not believe that blow would have hurt anyone."

Page 17, Witness Elliott:

"Q—Did you strike Mr. Robinson?

A—I acted in self-defense. I had my fist closed. I never went after the man, I shoved out my fist and Robinson went down. I believe it was poor footing caused him to fall."

It should be borne in mind that the foregoing excerpts are taken from the obviously guarded testimony of the claimant's own witnesses but, even so, they support the testimony of the carrier's witnesses that Claimant Elliott did strike Foreman Robinson with his fist and knock him down.

In contrast to Foreman Robinson's record and reputation as a peaceful man, Claimant Elliott's own fellow employes testified as follows in regard to his disposition and conduct:

Carrier's Exhibit "A", Page 4, Witness Pearce, Machinist:

"A—* * * It isn't the first time Supervisor has been hit by him (Elliott). He has struck blows with several of the boys while on duty at various times such as this when there would be no reason for it whatsoever. I do not know of anyone that has experienced any good from him as there has been other supervisors and employes struck by this man while on duty."

Page 4, Witness Gehrman, Fireknocker, Fireman & Oiler:

"A—* * * This employe (Elliott) has made trouble for employes on different occasions and is a constant source of trouble among the men and men avoid him much as possible to keep down trouble and some things come along that are not recorded which probably should have been."

Affidavit by Mr. B. F. Deutschman, now employed by the carrier as district foreman at North Platte, Nebraska, who was foreman at Kearney from March 15, 1943, until January 1, 1947, is offered as carrier's Exhibit B to further indicate the character and conduct of Claimant Elliott.

The claimant's previous actions did not determine his guilt in the present charge and were only considered in deciding what action was necessary to stop this man from engaging in aggressive fisticuffs, without cause or provocation, to inflict bodily harm upon his supervisors and fellow employes and the consequent disruption to the proper conduct of business.

The carrier acted in good faith after careful consideration in imposing discipline which was neither unjust nor unduly severe but which was necessitated by the carrier's obligation to its employes. The carrier's judgment should not be disturbed.

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.

Under the provisions of Rule 10, claimant was held out of service from May 10, 1949, pending hearing held by agreement on May 13, 1949, after which he was disciplined by dismissal until June 8, 1949. On that date he was returned to his former position as a matter of leniency. No contention is made that claimant did not have a fair and impartial hearing.

The primary question presented for decision is whether or not such action of the carrier was arbitrary, unreasonable or unjust. Being a discipline case, it is elementary that the Division cannot substitute its judgment for that of the carrier unless it was so tainted with one or more of such three elements of injustice.

We have carefully examined the record and evidence presented and in light thereof have considered the various contentions made by the parties. After doing so we are unable to find that the carrier acted arbitrarily, unreasonably or unjustly. Therefore we are required to conclude that the claim should be and is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1950.