

Award No. 1411

Docket No. 1338

2-NP-CM-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Claim of E. M. Rosner that he be reinstated into the service of the Railway Company with seniority rights unimpaired and pay for all time lost subsequent to his dismissal from service on June 5, 1950, based on Rule 37 of the Shop Crafts Agreement effective February 1, 1945.

JOINT STATEMENT OF FACTS: Prior to June 5, 1950, E. M. Rosner was employed as a coach builder welder at Como Shops (Saint Paul) having established a seniority date as a carman as of July 5, 1934.

On May 29, 1950, Shop Superintendent W. E. Gleb addressed the following letter to Mr. Rosner:

"Como Shops, St. Paul, Minn.,
May 29, 1950
File F-25-1103

Mr. E. M. Rosner,
Welder (Coach Builder),
Como Shops.

You are hereby notified, in accordance with the Rules of the Agreement with the Northern Pacific Railway Company and System Federation No. 7, Railway Employees, A. F. of L. to report at the office of Shop Superintendent, Como Shops, St. Paul, at 9:00 A.M. on Thursday, June 1, 1950, for investigation on the following matter:

You are charged with inattention to your duties, failure to comply with instructions from proper authority, entering into altercation with your superior officer and with insubordination while employed as Coach Builder Welder at Como Shops on May 26, 1950 in violation of Rules 701 and 702 of the 'Excerpts from the Operating Rules and General Instructions', which are part of the Book of Safety Rules, Form 541, effective January 1, 1946.

Your attention is called to your rights under current Schedule Rules, to be represented at this investigation by an employee of your choice.

/s/ W. E. Gleb
Shop Superintendent"

with payment of wage loss, the measure of damages is payment of the difference between what Mr. Rosner would have earned had he remained in the service of the railway company and what he received in any other employment during the period he is out of service. See Awards Nos. 362, 655, 1185, 1215, 1302, 1308 and 1309 of this Division.

Mr. Rosner was charged with inattention to his duties, failure to comply with instructions from proper authority, entering into an altercation with his superior officer and with insubordination while employed as a coach builder welder on May 26, 1950, in violation of Rules 701 and 702 of the Book of Safety Rules, Form 541. Prior to the assessment of discipline, Mr. Rosner was accorded an investigation on June 1, 1950, in conformity with Rule 37 of the current shop crafts' agreement. At this investigation the testimony of three mechanical department supervisors and two fellow employes conclusively showed that Mr. Rosner was derelict in the performance of his duties and in the observance of instructions as charged. Mr. Rosner admitted the charges. There were no extenuating circumstances introduced at the investigation on June 1, 1950, that would relieve Mr. Rosner from complying with instructions and attending to the duties attached to his position. The discipline administered was commensurate with Mr. Rosner's dereliction and violation of Rules 701 and 702 of the Book of Safety Rules, Form 541.

The claim covered by this docket 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.

The carrier was justified in administering discipline, but the discipline administered in this particular case should be modified.

AWARD

E. M. Rosner shall be reinstated with full seniority rights, but claim for time lost is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Dorothy Fountaine
Acting Secretary

Dated at Chicago, Illinois, this 16th day of November, 1950.