

**Award No. 1435**

**Docket No. 1358**

**2-L&N-CM-'51**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (Carmen)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY  
(Nashville Terminals)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1—That the carrier's dismissal of Carman Helper Charles Wade, effective February 24, 1950, was not authorized by the current agreement.

2—That accordingly, the carrier be ordered to restore Carman Helper Wade to service and compensate him for all time lost subsequent to February 24, 1950.

**EMPLOYEES' STATEMENT OF FACTS:** Charles Wade, hereinafter referred to as the claimant, was regularly employed by the carrier at Nashville Terminals, Nashville, Tennessee, as a carman helper, with seniority dating on the carmen helpers' seniority roster of November 17, 1944. On January 30, 1950, the claimant was charged with failing to protect his assignment as car oiler, Kayne Avenue Yards, January 24, 1950 and was summoned to appear for a hearing at 9 A. M., February 3, 1950. The date of the hearing was subsequently changed and held on February 8, 1950 at Nashville, Tennessee. This is affirmed by copies of letters, submitted herewith and identified as Exhibit A, dated January 30, 1950 and Exhibit A-1 dated February 1, 1950, respectively, addressed to the claimant, with a copy to local chairman of the carmen by Mr. C. A. Ellner, master mechanic. The hearing was held as scheduled and copy of the transcript record is submitted herewith and identified as Exhibit B. On the basis of that record, the claimant was discharged on February 24, 1950. This is verified by copy of letter submitted herewith bearing the date of February 23, 1950 addressed to the claimant by Mr. C. A. Ellner, master mechanic, identified as Exhibit C.

The agreement effective September 1, 1943 is controlling.

**POSITION OF EMPLOYEES:** It is submitted that the dismissal of this claimant for failing to protect his assignment as car oiler on January 24, 1950 was unjustified. He made all preparations necessary to be, and it was his intention to be on duty at the beginning of his shift at 3 P. M., January 24, 1950. (See page 12 of Exhibit B.) Upon failing in this, he complied with Rule 21 of the current agreement reading—

record is good, might, and usually would be, inadequate discipline for an employe with a bad record." (Second Division Award No. 1261, Referee Adolph E. Wenke.)

\* \* \* \*

"In the discipline to be imposed after determining his guilt, it was not only proper but essential in the interest of justice for the Carrier to take into consideration the employe's past record. See Award 1367. In view of such past record and the nature of the charge, we do not find the discipline imposed to be either arbitrary, unreasonable or excessive." (Second Division Award No. 1402, Referee E. B. Chappell.)

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"The control by the employer over the employe is the responsibility of the Management. This Division should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer." (Second Division Award No. 153, Referee John P. Devaney.)

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"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." (Second Division Award No. 1389, Referee E. B. Chappell.)

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The carrier submits that the dismissal of Wade was not arbitrary, unreasonable or unjust. It was not in violation of any provision of the current agreement, and the dismissal must stand.

**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 Division finds no grounds for disturbing the discipline administered.

#### AWARD

Clam denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1951.