

Award No. 1493

Docket No. 1419

2-C&NW-MA-'51

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Machinist A. F. Oddo was unjustly dismissed from the service on November 21, 1949.

2. That accordingly the carrier be ordered to restore the aforementioned machinist to service with service rights unimpaired and compensate him for all time lost retroactive to the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: On the morning of November 21, 1949, when claimant Oddo reported for work on his regular work shift of 8:00 A.M. to 4:00 P.M., he was handed the following notice by his foreman:

"Mr. A. F. Oddo

You are hereby requested to appear in Mr. Magill's office on Monday morning, September 21, 1949 for investigation for failure to complete changing head, liner and piston in eight (8), a job that normally should not require more than three (3) hours.

You have the privilege of selecting a representative of your choice for this investigation.

/s/ D. W. Andersen
General Foreman

Time of Investigation 9:00 A.M."

As result of receiving said notice, Claimant Oddo reported to the office of the shop superintendent, with the local machinists' committee at 9:00 A.M. and an investigation was held on charges filed against him. A copy of the investigation record is submitted herewith and identified as Exhibit A.

On November 22, 1949, when the claimant reported to the superintendent's office, he was handed a letter dated November 21, 1949, dismissing him from service, a copy of which is submitted and identified as Exhibit B.

Subsequently, request was made for the reinstatement of the claimant to the chief mechanical officer, with compensation for all time lost.

Carrier's Exhibit No. 13, Mr. G. F. Stephens' letter of June 1, 1950 to Mr. Z. M. Church.

Carrier's Exhibit No. 14, Mr. Z. M. Church's letter of June 8, 1950 to Mr. G. F. Stephens.

Carrier's Exhibit No. 15, Mr. G. F. Stephens' letter of November 30, 1950 to Mr. Z. M. Church.

Carrier's Exhibit No. 16, Mr. Z. M. Church's letter of December 11, 1950 to Mr. G. F. Stephens.

In addition to the above, we also attach hereto as carrier's Exhibits, the following sworn statements:

Carrier's Exhibit No. 17, statement of George W. Bohannon, chief mechanical officer, dated February 27, 1950.

Carrier's Exhibit No. 18, J. C. Stump's statement dated February 27, 1950.

Carrier's Exhibit No. 19, Mr. H. H. Magill's statement dated February 27, 1950.

Carrier's Exhibit No. 20, Mr. H. H. Magill's statement dated February 15, 1950.

POSITION OF CARRIER: It is the position of the carrier that this case is not properly before this Division of the National Railroad Adjustment Board for the reason that it was disposed of in its entirety by agreement between Mr. G. W. Bohannon, chief mechanical officer for the railway company, and Mr. Z. M. Church, general chairman, District No. 7, International Association of Machinists, as representative for Mr. Oddo, as fully and completely shown in the above statement of facts and that the case should be dismissed. However, if the Board holds that the case is properly before it, then it is the position of the carrier that:

1. The evidence produced at investigation in Mr. Magill's office November 21, 1949, indicates conclusively that Mr. Oddo was guilty of the charges for which he was disciplined.

2. That discipline by dismissal was not unreasonable based on the fact that it is and has been the position of the federated craft organizations, including the International Association of Machinists, that federated craftsmen cannot be disciplined, except by dismissal, i.e., they cannot be disciplined by suspension of time, by demerit marks against their record, by reprimand, or otherwise.

3. That Oddo was given the same opportunity to return to work as of or about January 16, 1950, as was Lutz; that any time which he may have lost since that date is the result of his own action and not the responsibility of the carrier.

4. That Oddo was given a second opportunity to return to service—See carrier's Exhibit No. 4—Mr. Stephens' letter January 30, 1950 to Mr. Church.

5. That this Board cannot now properly authorize reinstatement of Oddo with seniority rights unimpaired either with or without compensation for time out of service.

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 claimant was one of two machinists discharged on or about November 21, 1949. The machinist other than the claimant returned to service without pay for wage loss pursuant to an understanding regarding both men reached in conference on January 4, 1950 between the petitioner's general chairman and the carrier's chief mechanical officer.

Claimant, however, declined to return to service without pay for wage loss whereupon his duly authorized representative appealed an asserted claim of the claimant for reinstatement with pay to the carrier's chief operating officer who, in a letter dated January 30, 1950 to the claimant's authorized representative, said in conclusion:

"May I suggest it might be wise for Mr. Oddo to return to service; and if there be any question in respect to compensatory features, you and I can handle that matter to a conclusion."

Under date of February 1, 1950, the claimant's representative replied in part as follows:

"In line with your suggestion in last paragraph of your letter of January 30, 1950, I am contacting Machinist Oddo and suggesting that he return to service and that you and I will handle any compensatory features involved, to a conclusion, and will advise you as to his decision as soon as reply is received to my suggestion."

The claimant reported for work on February 15, 1950 but, for reasons peculiar to himself, did not work on that date or any date thereafter.

AWARD

The claimant shall be reinstated as machinist with seniority unimpaired and the question of wage loss up to but not later than February 15, 1950 is remanded for handling by and between the parties without prejudice to resubmission of this question to this Division on the basis of the record of hearing accorded the claimant preceding his dismissal.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1951.