

Award No. 1495

Docket No. 1439

2-SAL-BK-'51

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Blacksmiths)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Blacksmith A. G. McRae was unjustly suspended on November 7, 1949 and unjustly dismissed without a fair hearing on December 14, 1949.

2. That accordingly the carrier be ordered to restore the aforesaid employe to service with service rights unimpaired and paid for all time lost retroactive to November 7, 1949.

EMPLOYEES' STATEMENT OF FACTS: Blacksmith A. G. McRae, hereinafter referred to as the claimant, was employed by the carrier on December 11, 1924 as an apprentice blacksmith, completing his required time during the month of July, 1929. Upon completing his apprenticeship, worked as a mechanic relieving regular employes beginning with June 11, 1934 and at different intervals until he was employed regularly on August 9, 1937, until unjustly suspended November 7, 1949. The claimant had approximately seventeen (17) years of service with the carrier. The claimant, in the capacity of shop committeeman, on November 7, 1949, together with the local chairman, requested a meeting with Mr. R. L. Lynn, assistant shop superintendent, for the purpose of discussing the remarks made by Foreman Brown to the claimant's helper, that the claimant was lying down on the job. Mr. Lynn summoned Foreman Brown to the office and during the ensuing discussion, the claimant was advised he was out of service. On November 9, 1949, the claimant received a letter from Shop Superintendent Alexander, advising him he was charged with insubordination to his foreman, having used abusive language in an arrogant and threatening manner and an investigation would be held in his office at 10:00 A.M., November 15, 1949, a copy of which is submitted herewith and identified as Exhibit A. At the request of the local chairman, the hearing date was moved up to November 11, 1949. On the morning of November 11, the claimant, accompanied by Local Chairman Phelps and Attorney Shepard, appeared for the hearing and Mr. Alexander asked the claimant who Attorney Shepard was, to which the claimant replied, "This is Mr. Shepard, my representative." Local Chairman Phelps then explained the attorney was there to assist him, to which Mr. Alexander stated, "I am not going to hold any investigation with a lawyer present." After much discussion on the point, Mr. Alexander refused to hold the investigation, so the claimant and his representatives walked out on the advice of council, with no further remarks from Mr. Alexander.

At 1:05 P.M., November 11, a letter dated November 11, 1949 was given to the Local Chairman, Mr. Phelps, stating that the investigation would be re-

tremely dangerous indeed for this party to reach a pitch of anger. The apparent natural instinct of this person is clearly shown by the testimony in the hearing of this case and his actions cannot be excused on the ground that he did not reach a "pitch of anger."

Under the current agreement, Blacksmith A. G. McRae was not unjustly suspended on November 7, 1949, and was **not** unjustly dismissed without a fair hearing on December 14, 1949, and request your Honorable Board to so find.

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.

After reviewing the record in this case the Division is of the opinion that Blacksmith A. G. McRae should be reinstated with seniority rights unimpaired but without pay for time lost.

AWARD

Blacksmith A. G. McRae shall be reinstated with seniority rights unimpaired. Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1951.