

Award No. 1508
Docket No. 1417
2-D&RGW-MA-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and
in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That the service rights of Machinist Helper Dee Barker was unjustly terminated between the period of May 28, 1949, to October 5, 1949, and that accordingly the carrier be ordered to compensate this employe for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Dee Barker, hereinafter referred to as the claimant, entered the service of the carrier as a machinist helper on October 20, 1945, at Salt Lake City, Utah.

The claimant's regularly assigned hours of work were from 11:00 P. M. to 7:00 A. M. six (6) days per week exclusive of Sundays and holidays.

The claimant was summoned to appear for a hearing at 8:00 A. M. May 25, 1949, for the purpose of establishing facts and placing responsibility account being absent from duty and laying off without permission on Sunday, May 22, 1949. Transcript of the investigation record is submitted herewith and identified as Exhibit A.

The following notice was directed to the claimant under date of May 27, 1949, submitted herewith and identified as Exhibit B:

"This is to notify you that as a result of formal investigation held in office of Master Mechanic, Salt Lake City, Utah, 8:00 AM Wednesday May 25, 1949, you are dismissed from the service of the Denver & Rio Grande Western Railroad Company, effective at close of shift May 28, 1949.

Q. How long have you been employed by the Denver & Rio Grande Western?

A. 3 years.

Q. What department do you work in at the present time?

A. In the roundhouse.

Q. What shift?

A. 11 to 7, the midnight shift.

Q. Did you report for work on May 22, 1949?

A. No sir.

Q. Did you request permission to be absent from duty on the date in question?

A. No sir.

Q. Then you were off in violation of Rule 19 of the current shopmen's agreement?

A. Yes sir."

Dee Barker, claimant herein, admitted that he violated Rule 19 of the effective schedule of agreement.

The dismissal of Dee Barker was not arbitrary or capricious on the part of carrier but is in line with discipline carrier has assessed for this offense. Submitted herewith as carrier's Exhibit B, are letters addressed to other employes at Salt Lake City showing that carrier has assessed the same discipline in other cases without protest from organization. This dismissal of Dee Barker was proper and he should **not** be compensated for time out of service from May 28 to October 5, 1949. Further, carrier notified Mr. Barker to return to service September 19, 1949, but he failed to report until October 5, 1949. Without in any manner conceding that the dismissal was not proper carrier desires to direct the attention of your Board to Paragraph (f) of Article 32:

"RULE 32.

Discipline

(f) If the final decision decrees that the charges against the employe were not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employe shall be reinstated and compensated for the wage loss, if any, suffered by him."

This paragraph provides that employe unjustly dismissed will be compensated for the wage loss, if any, suffered by him. If your Board should determine that the dismissal of Dee Barker was not proper, then under the provisions of Article 32 (f) any compensation received by Dee Barker between May 28 and October 5, 1949, must be set off against any allowance to Mr. Barker by your Board.

Carrier submits that in view of the admitted violation of Rule 19 by Mr. Barker the dismissal was proper and Mr. Barker is **not** entitled to wage loss from May 22, 1949 to October 5, 1949.

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.

Dee Barker, machinist helper, failed to report for service on May 22, 1949, and failed to obtain permission to be absent or to notify the carrier that he would not report for work. Thereafter, at the close of a full and complete hearing, the carrier imposed discipline which resulted in termination of his service between May 28, 1949, and October 5, 1949.

Rule 19 of the current agreement provides:

"(a) An employe desiring to remain away from service must obtain permission from his foreman to do so; but if sickness, or other unavoidable cause, prevents him from reporting at his regular post of duty, he shall notify the foreman as promptly as possible. Failure to do so places said employe liable to discipline."

It is clear from the record that Barker's absence on that date in question was not due to sickness but to personal activities while off duty which resulted in his arrest and detention in jail during all of that day and a portion of the next. Under the confronting facts and circumstances we are unwilling to hold that an "unavoidable cause," within the meaning of that term as used in Rule 19, prevented this employe from reporting at his regular post of duty on May 22, 1949. Thus it appears that under the express provisions of such rule he was subject to disciplinary action. The penalty actually resulting from the discipline imposed, namely, suspension from service from May 28, 1949, to October 5, 1949, was not, in our opinion, sufficiently severe to warrant this Division in holding the carrier guilty of abuse of the discretionary powers vested in it in the disposition of discipline cases. The result is the claim for wages lost during Barker's absence from service cannot be upheld.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1952.