

Award No. 1513

Docket No. 1415

2-L&N-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. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist Otto Marten was unjustly suspended on September 14, 1950 and discharged from the Carrier's service on October 12, 1950.

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 since September 14, 1950.

EMPLOYEES' STATEMENT OF FACTS: Machinist Otto Marten, herein-after referred to as the claimant, was hired by the carrier, November 8, 1943. His regular assigned hours were from 3:40 P.M. to 12:00 Midnight, at Louisville, Kentucky, September 14, 1950.

Claimant Marten reported for duty on his regular shift September 13, 1950, and was informed that he had been selected by the foreman and committeeman to operate a wheel lathe temporarily, in another department of the shops until a regular operator could be secured and assigned thereto pending the expiration date of a bulletin covering the job.

Marten explained to his foreman that his physical condition, rheumatism in the right leg, was such that he could not possibly operate the machine and he apologetically declined to do so. Thereupon, the foreman became provoked with Marten's attitude and accused him of being insubordinate and cited him to appear for an investigation, the following day, September 14, 1950, a copy of the citation dated September 13, 1950 is submitted herewith and identified as Exhibit A. The claimant's hearing proceeded as scheduled and submitted herewith and identified as Exhibit B, is a copy of the hearing record. Immediately following the investigation, the claimant was suspended, pending adjudication of the evidence, and twenty eight days later, October 12, 1950, he was notified that he had been deemed guilty and was served with a notice of his dismissal from the service, a copy of which is submitted herewith and identified as Exhibit C.

This case has been handled with all carrier officials in compliance with the existing rules governing such matters, who are designated to handle such affairs, all of whom have declined to settle the dispute.

An analysis of Mr. Marten's testimony shows that at time of the investigation he claimed to be bothered at times with rheumatism in his legs. He admitted, however, that he worked regularly despite this condition and it had been almost a year since he found it necessary to lay off one night account of his leg. He further admitted he was in good condition when he reported for duty 3:00 P.M. on September 13, 1950. However, immediately upon being advised that he was selected to operate wheel lathe temporarily he stated he was unable to do so, which, in the subsequent investigation, he stated was due to his rheumatic condition. He also admitted the operation of wheel lathe requires no leg action other than standing and walking, and that the operation is similar to operation of the turret lathe to which he was regularly assigned in the machine shop. In view of this it is hard to understand how he could contend he was in good condition and able to operate one machine, but was not physically able to operate the other. The afternoon he refused to accept the assignment to temporarily operate the wheel lathe he made no request to be relieved account of his physical condition, he has not indicated his condition required medical attention, and apparently he would have worked had he been permitted to operate the machine of his choice. In all circumstances only one reasonable conclusion can be reached, which is that he resented the fact that he had been selected by agreement between his representatives and the officer in charge for the temporary assignment, and decided he would not accept it regardless of the consequences.

Carrier submits that Marten's actions in refusing to operate lathe temporarily in accordance with instructions was serious, and that in all the circumstances it was fully justified in removing him from the 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 Division is satisfied the record discloses facts sufficient to sustain the charge and warrant the imposition of reasonable discipline, but it believes that under the existing circumstances the imposed penalty of discharge from service was so severe as to result in an abuse of the discretionary powers vested in the carrier in discipline cases. Therefore, it finds that within fifteen days from the date of the adoption of this Award the involved employe should be reinstated with seniority rights unimpaired, without pay for time lost, as a result of the discipline imposed. It is so ordered.

AWARD

Claim sustained in part and denied in part as indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1952.