

Award No. 1543

Docket No. 1473

2-MP-EW-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement, Electrician C. R. Wood was unjustly suspended from the service at 2:30 P. M., on July 16, 1951 and unjustly dismissed from the service on July 19, 1951; that accordingly the carrier be ordered to reinstate this employee to all service rights with compensation for all time lost retroactive to 2:30 P. M., July 16, 1951.

EMPLOYES' STATEMENT OF FACTS: Electrician C. R. Wood, hereinafter referred to as the claimant, has been continuously employed as such by the carrier at Sedalia, Missouri since October 16, 1926, and whose regular assignment of hours at the time of this incident were from 8:00 A. M. to 4:40 P. M.

The carrier ordered this claimant removed from the service about 2:30 P. M. on Monday, October 16, 1951, pending a hearing at the same time on the charges stipulated in letter dated July 16, 1951, addressed to the claimant by the carrier's Mr. Bailey, superintendent of shops, copy of which is submitted herewith and identified as Exhibit A. However, this hearing was not held until 9:00 A. M., Wednesday, July 19, 1951, but the carrier nevertheless continued the claimant on suspension and a copy of this hearing transcript is submitted herewith and identified as Exhibit B.

The carrier's Mr. Bailey, superintendent of shops, made the election at 4:15 P. M. on the date of the hearing, July 19, 1951, to dismiss this claimant from the service and a copy of this dismissal letter addressed to the claimant is submitted herewith and identified as Exhibit C. This decision has been properly appealed with the result that the carrier's chief personnel officer has declined to adjust the claim.

The Agreement effective September 1, 1949, is controlling.

POSITION OF EMPLOYES: It is submitted on the basis of the above factual statement, in conjunction with Exhibits A, B and C, that the established record thoroughly and fairly considered warrants a finding of conclusions which follows:

duct with which claimant was charged justified claimant's dismissal from service. The penalty assessed is not excessive and does not abuse the discretion which the carrier has the right to exercise. The policy of your Board is not to substitute its judgment for that of the carrier.

This claim is wholly without merit. The claim must be denied.

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 electrical workers of System Federation No. 2 contend Electrician Clarence R. Wood was unjustly suspended from service on July 16, 1951 and unjustly dismissed from service July 19, 1951 and because thereof carrier be ordered to reinstate this employe to all service rights and to pay him for all time lost.

Claimant was charged with "using threatening and abusive language toward acting Electrical Foreman E. L. Allcorn, July 13, 1951." These charges are of such a nature that suspension pending hearing was proper within the meaning of Rule 32 (b) of the parties' effective agreement. They are also sufficiently definite to apprise claimant of the nature of the offense and therefore meet the requirements of Rule 32 (c) of the parties' agreement in that respect.

In regard to claimant's conduct the following is applicable. Regardless of what rights an individual employe coming under a collective bargaining agreement may have by reason thereof he still owes obedience to the orders of his superiors when on duty. He is not at liberty to assert those rights for himself but must comply with any orders given him. (His failure to do so will make him subject to discipline.) If, in obeying such orders, any rights which he may have by reason of the agreement are violated his redress lies through the channels which the agreement provides for his protection. In this respect, the individual employe does not waive any of these rights by complying with the orders of his superiors.

Claimant had a fair and impartial hearing within the contemplation of Rule 32 of the parties' effective agreement. The carrier found claimant guilty of the charges it had made against him and thereupon dismissed him from its service. There was sufficient evidence adduced at the trial to support this finding.

A question is raised as to the discipline being unreasonable in view of claimant's service record. Claimant had been in the service of this carrier for over twenty-four years. During this time his record appears unblemished. In disciplinary proceedings the past service record of an employe should be considered in determining the extent to which discipline is proper. See Award 1367 of this Division. While claimant's conduct in this instance leaves much to be desired, it hardly justifies taking such severe action. Claimant has been out of service for almost a year. Under the circumstances disclosed by the record and claimant's past service record we find that he has been sufficiently disciplined and any additional punishment would be unreasonable. We, therefore, direct that he be immediately restored to service with all seniority rights unimpaired but that he be denied any compensation for the time he has been out of service.

AWARD

Claim for restoration to all service rights sustained, but claim for compensation for all time lost denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1952.