

Award No. 1598

Docket No. 1532

2-ACL-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the discipline assessed against Mallie Long, machinist helper, effective May 9, 1951, was improperly arrived at and represents unjust treatment within the meaning of Rule 21, third paragraph, of the controlling agreement.

That the carrier accordingly be ordered to compensate Helper Mallie Long at his established rate of pay for loss of wages resulting from the aforesaid suspension from work for a period of three days.

EMPLOYEES' STATEMENT OF FACTS: Investigation accorded Mallie Long, the claimant, April 16, 1951, discloses that he then held a shift assignment as box packer in engine house at Tampa, Florida, with approximately twenty-nine years' experience as such.

The discipline notice dated May 7, 1951, states that three days' actual suspension from work was assessed against the claimant for those reasons set forth therein as follows:

"Account of Engine 455 having hot box, left lead engine truck, Train 243, April 11, 1951, you violated Rule 32, Paragraph "B", of the Agreement Between the Atlantic Coast Line Railroad Company and Employees of the Mechanical Department."

Notice of investigation dated April 13, 1951, discloses that the claimant was not charged with violating Rule 32(b), and that he and his representative were thus relieved of defending against any charge properly lodged within the meaning of Rule 21 of the controlling agreement.

The controlling agreement is dated November 11, 1940, and contains revisions and supplements effective as shown in reprinted edition of March, 1950.

his seniority rights unimpaired and compensated for the wage lost, if any, resulting from said suspension or dismissal."

An examination of the record in this case—in the light of this rule—fails to reflect any unjust treatment of Helper Long by carrier. In the case here at issue all requirements of the hearing rule (Rule 21) have been scrupulously observed. Claimant Long was duly notified of the investigation to be held, he appeared at the investigation with representative of his choice and he declared he desired no witnesses present. He and his representative stated the investigation had been fairly conducted—in fact, Claimant Long stated "Absolutely (satisfactory). I appreciate it." Claimant, therefore, was afforded "due process" in the conduct of the investigation. All the requirements of the hearing rule have been met.

Carrier has the prerogative to expect absolute loyalty and full cooperation from its employes, and the organization, by rule of the agreement, is in accord with this promise. When an employe fails to perform, the interests of the carrier are jeopardized and the public interest is not served. An employe who fails to fulfill this fundamental obligation to his employer subjects himself to disciplinary action. Claimant has a long record of failure to properly pack engine boxes, and he knew on April 11, 1951, as he does today, the importance of properly performing these duties. When Helper Long failed to properly perform his duties on April 11, 1951, it was within carrier's province to assess discipline for such failure. It is carrier's contention that the discipline assessed Claimant Long was neither harsh nor excessive, in view of the seriousness of his failure to perform his duties, and requests your 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.

Claimant was suspended for three days on the charge of violating Rule 32(b). It is the contention of the Organization that carrier failed to comply with that part of Rule 21, current agreement, providing:

"At a reasonable time prior to the hearing such employe and the local chairman will be apprized in writing of the precise charge against him."

The purported charge lodged against the claimant, insofar as it is pertinent here, is as follows:

"You were box packer in the enginehouse on April 11, 1951, and worked boxes on engine truck of engine 455 on this date. The engine was dispatched on train 243 same date. The left lead engine truck brass ran hot, melting all the metal, necessary to rebrass it at Matoaka, Florida, delaying the train 100 minutes."

The position of the Organization is correct. The foregoing not only does not state a precise charge but it does not purport to state any charge of rule violation at all. If the claimant admitted every statement in the purported charge to be true, he would not thereby admit any rule violation or wrong doing on his part. Such a statement is not in accordance with the requirements of the quoted portion of Rule 21.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

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