

Award No. 1664

Docket No. 1567

2-MP-MA-'53

**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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That under provisions of Controlling Agreement, particularly Rules 31 and 32 thereof, Machinist Joe Lyons was unjustly suspended from service at 4:30 A. M., December 13, 1951.

(b) That the Carrier did by formal investigation fail to sustain their charges against Mr. Lyons, therefore by their failure to restore him to service following investigation, with full seniority rights unimpaired, and compensation for all time lost, the Carrier was in violation of provisions of Rule 32 of Controlling Agreement.

(c) That accordingly Carrier be ordered to reinstate this employe with all seniority rights unimpaired with pay for all time lost retroactive to 4:30 A. M., December 13, 1951.

EMPLOYEES' STATEMENT OF FACTS: Under date of August 9, 1922, the carrier first employed Joe Lyons as machinist at Kansas City, Missouri. Joe Lyons, hereinafter referred to as the claimant has been continuously employed at Kansas City as machinist subsequent to his original employment date, establishing a satisfactory service record of approximately thirty years. His regular assigned working hours are 12:00 Midnight to 8:00 A. M. five days per week.

Under date of December 13, 1951, the carrier did over signature of Mr. A. J. Daniel asst. master mechanic advise Mr. Lyons in writing that the claimant should appear in office of master mechanic—Kansas City, Missouri 9:00 A.M., December 17, 1951, on charge of being asleep on the right seat box—diesel 9205, 4:30 A.M., December 13, 1951. (See employes' exhibit submitted herewith and identified as employes' Exhibit A).

As result of some reason which was not developed in the investigation, the claimant did not report for investigation, consequently, under date of December 17, 1951, a letter over signature of Master Mechanic E. M. Vandiver, which was addressed to Mr. Lyons instructing the claimant to advise

Since the evidence produced at the investigation fully supports the serious charge against the claimant, which offense merits discipline as severe as dismissal from service, it follows that this claim must be denied on the merits as being entirely without support under the provisions of the agreement and wholly without merit as a matter of equity.

Although the instant claim was appealed by letter dated April 2, 1952 to the chief personnel officer by General Chairman Keller and declined by the chief personnel officer by letter dated May 29, 1952, **NONE** of the matters referred to in this submission have been the subject of discussion in conference between the parties hereto and no request for a conference has been received by the Carrier from the machinists' organization.

It is therefore obvious that this claim has not been discussed in conference and not handled in the usual manner on the property as required by Section 2 Second and 3 First (i) of the Railway Labor Act. See Second Division Awards 1433 and 1434. Therefore this claim should be dismissed.

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 employed by the carrier as a machinist on August 9, 1922. On December 24, 1951, claimant was dismissed from the service on the charge of being asleep while on duty. Claimant contends that this action was in violation of applicable rules and asks reinstatement with seniority rights unimpaired with pay for all time lost.

The record establishes beyond question that claimant was guilty of sleeping while on duty. It shows also that a fair investigation was held at which carrier determined that claimant was guilty as charged. The only question remaining is whether or not the dismissal of the claimant from the service was excessive punishment for the offense committed.

Claimant had been an employe of the carrier for almost thirty years. His record was clear except for five reprimands for derelictions in the inspecting of engines between the years 1934 and 1950. The organization converts these derelictions of duty into a statistical showing in which it is estimated that claimant was lax on an average of one for each 23,600 locomotives inspected. We concede that claimant is subject to discipline. Sleeping on duty is a serious offense in the railroad industry as the carrier asserts, but it is not as serious in some positions as in others; its seriousness varying with the nature of the work being performed. A fair consideration of all the facts, including the long service of this claimant, convinces us that the penalty assessed was excessive. It is true that this Board ought not ordinarily to interfere with the discipline assessed by a carrier after an employe has properly been found guilty of an offense. But where the punishment exceeds the bounds of reasonableness after a consideration of all the facts and circumstances, it must be considered as arbitrary and unreasonable. We think that the carrier acted unreasonably in dismissing claimant from the service in this case. We think that the purposes of discipline have been adequately accomplished by suspension from service from December 13, 1951, and that claimant is entitled to reinstatement with seniority unimpaired, but without compensation for time lost.

AWARD

Claimant reinstated with seniority rights unimpaired without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of April, 1953.