

Award No. 1758

Docket No. 1678

2-GN-CM-'54

**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. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman R. A. Van Water was unjustly deprived of his service rights during the period from March 31, 1952 to May 1, 1952.

2. That accordingly the carrier be ordered to reimburse the aforesaid Carman for all time lost during aforementioned period.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. A. Van Water (hereinafter referred to as the claimant), regularly employed and assigned as a car repairman on the repair track at Interbay, Washington, had 24 years continuous service with the carrier. The claimant is the local chairman of the Carman's organization at Interbay. Under date of February 15, 1952 the claimant was cited for investigation at 2:00 P.M. February 18, 1952 in notice of that date, which appears in the Hearing Transcript submitted herewith and identified as Exhibit A.

A postponement of the hearing was requested by the employes and granted by the carrier setting a new date for hearing at 2:00 P.M. March 12, 1952, which is confirmed by the hearing record submitted herewith and identified as Exhibit A.

The hearing was held as scheduled at 2:00 P.M., March 12, 1952, and submitted herewith and identified as Exhibit A is a copy of the hearing transcript.

Under date of March 28, 1952, Master Mechanic W. Lowney advised the claimant that he was suspended from service for a period of thirty (30) days effective April 1, 1952, a copy of which is submitted herewith and identified as Exhibit B.

ant admits that he was advised that the master mechanic wanted to speak to him over the telephone, and still he refused to speak to him.

"Q. In other words, you just did not want to talk to Mr. Lowney on the telephone?

A. Not alone.

Q. Even though you were requested to do so?

A. Yes."

The carrier, having conclusively established that the claimant was guilty as charged, and so admitted by the claimant, it follows that the action of the carrier in assessing discipline was by no means arbitrary, capricious or in bad faith, but was justified and proper. It must be agreed that the claimant's misconduct was the result of his own voluntary election and action. This claimant has been employed by this carrier for over 23 years. He knows now, and knew then, that rules must be obeyed.

In this case there can be no dispute as to the record. All parties expressed their satisfaction with the investigation and with the method of procedure.

The claimant and his representative were asked the following questions:

"Q. Are you gentlemen satisfied with the investigation, the manner in which it has been conducted, and that the questions asked have been fair?

Q. Mr. VanWater?

A. No exceptions.

Q. Mr. Davis?

A. No exceptions."

Therefore, we hold that your Board cannot do other than deny this claim.

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 R. A. Van Water was regularly employed as a car repairman on the repair track at Interbay, Washington. On February 15, 1952, he was cited for investigation for insubordination for refusing to talk to Master Mechanic Lowney by telephone when requested to do so by Car Foreman Brown. The car foreman was claimant's immediate superior and the master mechanic was a superior of both the car foreman and the claimant. Claimant was also the local chairman of the carmen's organization at Interbay. Claimant was found guilty of insubordination and suspended from service for thirty days.

The evidence shows that on February 15, 1952, Master Mechanic Lowney requested Foreman Brown to call Claimant to the telephone during Claimant's

work assignment. Claimant says that Foreman Brown told him that Master Mechanic Lowney wanted to talk to him on the phone and that he stated that he could not talk about union affairs except in conjunction with his committee. He says that it was for this reason alone that he declined to talk on the phone as requested. He cites Rule 7 in the Maintenance of Equipment Operating Department Rules to the effect that his instructions regarding his work were to come from his foreman when the latter was present and contends that the only reason the Master Mechanic could have had in talking with him on the telephone was to discuss grievances or other union affairs. The Master Mechanic does not state in the record the purpose of his telephone call. The foreman denies, however, that anything was said to him concerning any union matter or that it was the reason for the refusal of the claimant to come to the telephone.

We think the claimant was obligated to answer the telephone as requested by the master mechanic. Employees cannot properly assume, as did this claimant, that the call did not pertain to his employment by the carrier. Chaos would result if subordinate employees are permitted to make decisions of this kind on the property. Instructions of superiors must be complied with and, if a contract violation results, an adequate remedy is provided.

The record shows that claimant has been in the employ of this carrier for twenty-four years with a clear record. His work instructions come from his foreman when the latter is present as was the case here. We think claimant was clearly in the wrong when he ignored the direction of the master mechanic and that he is subject to discipline. The carrier failed, however, to give proper consideration to the mitigating circumstances surrounding this case. The suspension of thirty days is out of all proportion to the nature of the offense in view of claimant's past good record. No moral turpitude was involved. Under the record presented, the maximum discipline assessed should not have exceeded a five-day suspension. The claimant was unjustly treated and his claim will be sustained for time lost due to the suspension in excess of five days after April 1, 1952.

AWARD

Claim sustained in accordance with the opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May, 1954.