

**Award No. 1789**

**Docket No. 1665**

**2-MP-CM-'54**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current agreement the service rights and the employment relations of Carman S. J. Lyons were unjustly terminated effective as of 11:00 A. M. on March 11, 1953.

2. That accordingly the Carrier be ordered to reinstate this employe to all service rights retroactive to the aforesaid date.

**EMPLOYES' STATEMENT OF FACTS:** Carman S. J. Lyons, hereinafter referred to as the claimant, has been continuously employed as such by the carrier in its shops at North Little Rock, Arkansas, since June 22, 1923, and his regular assignment of hours were from 7:30 A. M.-4:00 P. M. Monday through Friday, with rest days Saturday and Sunday.

The carrier's superintendent of shops made the election on March 9, 1953, to summon the claimant, in writing, to stand a formal investigation at 10:00 A. M. on March 11, 1953, and a copy of that letter, unsigned, is submitted herewith and identified as Exhibit A. However, the investigation was not held because the written instructions to the claimant were not signed by the superintendent of shops and, consequently, the claimant did not respond for the investigation on March 11 so, at 11:00 A. M. on that date, he was suspended from the service over the signature of Mr. Duncan, superintendent of shops.

Nevertheless, this formal investigation was held by mutual understanding between the parties at 10:00 A. M., March 18, 1953, and a copy of the transcript thereof is submitted herewith and identified as Exhibit B.

The carrier's superintendent of shops five days subsequent to the date of the investigation, or on March 23, 1953, made the election to dismiss the claimant from the service of the carrier and this is affirmed by copy of letter signed by Mr. Duncan, Superintendent of Shops, submitted herewith and identified as Exhibit C.

The claimant was the chairman of the committees representing the carmen's craft for about four and one-half years during the days of the

brought pressure to force him to pay for it. Lyons had been told not to sell ice machines during shop hours, and was informed the next such complaint would result in a formal investigation and probable dismissal from the service.

October 7, 1946—Complaint concerning the activities of Mr. S. J. Lyons while allegedly acting as Local Chairman of the Carmen was made to Mr. O. A. Garber and Mr. L. R. Christy, then Chief Mechanical Officer and Superintendent Car Department, respectively. The complaint was handled with Mr. Lyons by former Shop Superintendent A. Hubener in conference on October 11, 1946, and there is attached hereto as Carrier's Exhibit "D" the following letters which were written concerning said complaint.

(1) Master Mechanic Geo. Schepp to Messrs. Garber and Christy, dated October 7, 1946.

(2) S. J. Lyons to Mr. A. Hubener, dated October 11, 1946.

(3) A. Hubener to Mr. L. R. Christy, dated October 14, 1946.

January 20, 1948—Charged with insubordination account refusing to perform the duties assigned by foreman, also leaving the premises of the North Little Rock Shop without permission of the supervisor on January 19, 1948, and suspended from service pending investigation set for January 27, 1948.

Mr. Lyons waived investigation in connection with the foregoing charge preferred against him in exchange for his return to service without pay for time lost, and promised he would comply with Carrier's instructions in the future."

After reviewing the past record of Claimant Lyons which has been very briefly outlined above, the carrier could find nothing in said record which could be considered in mitigation of the quantum of discipline which it was determined should be administered in connection with the matters now before your Board. On the contrary, when the guilt of the claimant in the instant dispute was considered in the light of his past record, it fully warranted the action taken by the investigating officer; consequently, when the matter was appealed to the highest officer designated by the carrier to consider such matters on appeal, he declined to disturb the discipline which has been administered to Claimant Lyons.

The request for reinstatement of the Claimant to the service of this Carrier should, therefore, 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 employees 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.

Carmen of System Federation No. 2 make this claim in behalf of Carmen S. J. Lyons who was dismissed from carrier's service effective 11 A. M., March 11, 1953. They claim his services were unjustly terminated and that,

because thereof, carrier should be ordered to reinstate him with all his service rights fully restored. See Rule 32(e) of parties' agreement.

Claimant was a local chairman of some seven hundred employees. On March 9, 1953, he was charged by W. F. Duncan, superintendent of shops, with:

"Leaving your assigned job March 5, 1953, about 10:30 A.M. and going to Union Station and not reporting to your immediate supervisor that you were leaving and not reporting to him on your return and not making appointment with supervisor at Union Station that you were coming over to handle grievance."

By agreement an investigation of the charges was had on March 18, 1953, in the office of W. F. Duncan, superintendent of shops, at North Little Rock, Arkansas. As a result of this investigation, based on the record made thereat, claimant was dismissed from carrier's service.

Claimant had been regularly employed by carrier in its shops at North Little Rock, Arkansas, since June 22, 1923. His tour of duty was from 7:30 A. M. to 4 P. M. Thursday, March 5, 1953, was one of the work days of his regular work week. On that day he was working at door table on program line in the freight shed under the supervision of R. L. Phillips, assistant freight car foreman. The incident out of which the charges grew occurred sometime after 10 A. M. that day when claimant and Carman A. G. Miller, vice-chairman of the carmen, went to the Union Station to check the condition of a pit on the rip track located there about which claimant had received a complaint.

Complaint is made of the fact that claimant was suspended pending a hearing on the charges against him. In this respect Rule 32(b) of the parties' effective agreement provides:

"Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule."

The charges here made are of such a character as to authorize carrier to suspend claimant pending a hearing on the charges it had made against him. The fact that the original letter of March 9, 1953, was not signed, if such be the fact, would be immaterial as claimant was given additional notice by letter dated March 11, 1953, and subsequently agreed to the date of hearing.

Further contention is made that a "fair hearing" was not had within the intent and meaning of the parties' agreement. Rule 32(a) provides:

"No employe shall be disciplined without a fair hearing by a designated officer of the railroad."

It is true, as contended by claimant, that the superintendent of shops, who conducted the hearing, asked questions, determined the factual issues, and imposed the punishment. However, such procedure is within the contemplation of the language of the parties' agreement which provides that the hearing shall be conducted by a designated officer of the carrier. While there is much in the way of logic and reason to the contention that such a situation cannot produce a fair hearing, nevertheless, until the parties provide otherwise in their agreements, this procedure must be approved.

The record shows carrier called all the witnesses claimant asked to have present and that he was given an opportunity to fully question them and all other witnesses present. We think claimant was given a fair hearing within the intent and meaning of Rule 32(a). Before passing this issue, however, it seems appropriate to say that the attitude of the officer in charge left much to be desired. It certainly was not exemplary of what ordinarily would be expected of a person performing such duties.

We come then to the sufficiency of the evidence adduced to support finding that claimant was guilty of the charges carrier had made against him. Before doing so, however, we shall briefly discuss certain rules and regulations promulgated by carrier and which claimant is charged with having broken.

Rule 31(b) of the parties' agreement provides:

"All conferences between local officials, and local committees to be held during regular working hours without loss of time to committeemen or other employe representatives."

Rule 33 provides:

"The Company will not discriminate against any committeeman, who, from time to time, represent other employes, and will grant them leave of absence and free transportation when delegated to represent other employes."

There is no evidence carrier ever refused to give a local chairman or other employe representative, time to carry on their organization activities. However, it did require, when a local chairman or committeeman received a report of a violation in a department other than that in which he was employed, that he notify his immediate supervisor of the fact that it was necessary for him to investigate a complaint or violation in another department. After advising his immediate supervisor of such fact carrier required the local chairman or committeeman to proceed to the department in which the complaint originated and, upon arriving there, to notify the foreman of that department of his reason for being there. Upon return to his own department such local chairman or committeeman was required to advise his immediate supervisor of that fact.

There is nothing in these requirements that in any way violate the quoted rules. We find them to be reasonable rules promulgated for the purpose of controlling the action of employes while on duty and which carrier had a right to promulgate and put into effect. Claimant had been informed thereof and was familiar therewith. It was his duty to comply therewith when a situation arose to which they had application.

The evidence was in dispute. If Assistant Freight Car Foreman R. L. Phillips, claimant's immediate supervisor, General Passenger Car Foreman G. B. Cartwright, Union Station, and Passenger Car Foreman M. M. Erion, Union Station, are to be believed then claimant did not report to his immediate supervisor upon leaving his post to go to the Union Station nor report to him when he returned. Neither did he advise those in charge of the Union Station of his reasons for being there.

On the other hand if claimant and Carman A. G. Miller, vice-chairman of carmen, are to be believed then claimant did comply with carrier's requirements. These witnesses' testimony is, in effect, supported by circumstances testified to by Carman Helper Lewis Moton and Shop Laborer Clarence Jones.

It was the responsibility of the officer conducting the hearing to decide this disputed issue. He did so and we cannot say there is no substantial evidence to support such a finding or that his action was unreasonable in arriving at this decision.

We come then to the question, was a dismissal justified? Claimant had been in the carrier's service almost thirty years. Ordinarily that fact alone would be sufficient to say the action of carrier was unreasonable, provided claimant had a clear record. But such is not the case. Claimant's record shows he has had previous difficulties. In this respect we shall consider only

matters that have been properly assessed against him. If a charge is made, investigation waived, and the charges admitted, such charge is properly assessed as part of his service record.

We have come to the conclusion that the discipline assessed, when considered in the light of the offense of which claimant has been found guilty and his past service record, is not unreasonable and does not constitute an abuse of discretion on the part of carrier.

#### AWARD

Claim denied.

#### NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1954.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 1789

The majority admits in the findings that the attitude of the officer in charge of the hearing left much to be desired and then goes on to state that there is no substantial evidence that the action of the officer conducting the hearing was unreasonable in arriving at his decision. With this latter statement we cannot agree.

Section 3 First (1) of the Railway Labor Act provides for the selection of a neutral person or referee to sit with the Division as a member thereof and make an award. In a case such as the present one where the trial officer has acted as both prosecutor and judge it is even more desirable to have a neutral party evaluate the evidence. Evaluation of the evidence in this case supports the claimant's contention that he had complied with the carrier's requirements. Therefore the Division should have ordered his reinstatement.

Charles E. Goodlin

R. W. Blake

T. E. Losey

Edward W. Wiesner

George Wright