

Award No. 1830

Docket No. 1709

2-RDG-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement Car Inspector Albert Ottaviano was unjustly dismissed from the service on June 26, 1953.

(2) That accordingly the Carrier be ordered to reinstate the aforesaid Car Inspector with seniority rights unimpaired and paid for all time lost retroactive to June 26, 1953.

EMPLOYES' STATEMENT OF FACTS: A. J. Ottaviano (hereinafter referred to as the claimant) entered the service January 16, 1948 as laborer, at Port Reading, New Jersey, was promoted to packer and alternately through reductions in force worked as laborer, low pressure heating attendant and car repairer helper, he was promoted to car repairer December 5, 1949, changed to car inspector January 18, 1950 at which position he worked until dismissed June 26, 1953.

On June 1, 1953, General Car Inspector H. O. Ludwig directed a letter to the claimant citing him for investigation at 10:00 A.M., Wednesday, June 3, on a charge of "absenting yourself from assigned duty and company property without proper authority or permission," a copy of which is submitted herewith and identified as Exhibit A.

The hearing was held as scheduled and submitted herewith and identified as Exhibit B is a copy of the hearing transcript.

Under date of June 26, 1953 Mr. F. H. Rieker wrote the claimant advising him he was dismissed from the service of the carrier effective June 26, 1953, a copy of which is submitted herewith and identified as Exhibit C.

The agreement effective January 16, 1940, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the claimant car inspector believes he was unjustly dealt with when he was dismissed from the

intent of Rule 22, in view of which and two previous instances of record in which claimant was disciplined for the same offense and violation of the same rule, carrier maintains his dismissal was warranted and justified. The propriety of the discipline should not be questioned by the Board, as it was not assessed arbitrarily or without just cause. Furthermore, it must be recognized that it is necessary that discipline be administered in such manner that will bring about the enforcement of effective rules and regulations in order to insure proper, efficient and safe operation. There is no long history of continuous employment to be considered here and the record does not contain any evidence and there are no mitigating circumstances that merit special consideration or any change in the discipline assessed. Carrier, therefore, requests that the claim as submitted to the Board be denied in its entirety.

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 regularly assigned as a Car Inspector with assigned hours 3:00 P. M. to 11:00 P. M., Monday through Friday. On Tuesday, May 26, 1953, the foreman observed claimant's automobile at a Shell Service Station about $1\frac{1}{4}$ miles from claimant's place of work. He returned to his work at 7:35 P. M. He was charged with absenting himself from work without permission. He was accorded an investigation, found guilty and dismissed from the service. Claimant contends that he was unjustly dismissed from the service and demands that he be returned to service and paid for all time lost.

Claimant admits leaving the property of the carrier without permission on the day charged. Having admitted a violation of the rules, he is subject to discipline.

Claimant says that he completed testing a train that came into the yard and that he then went to shut off the pump. After shutting off the pump he observed that a tire was going flat on his automobile which was parked near the pump house. He had not eaten lunch, so he took his automobile to the service station to have the tire fixed. He lived 200 feet from the service station and ate his lunch while the tire was fixed. He was delayed longer than he intended and returned after being away for 40 minutes.

Claimant was already subject to discipline as his guilt was admitted. We think a dismissal from the service was excessive when the nature of the offense is considered along with the mitigating circumstances. Claimant had finished his work for the time being. He observed the tire on his automobile going flat. He had not had his lunch so he took the car to the service station while he ate his lunch at home. It is clear that his being absent did not tend to delay trains or otherwise damage the carrier. While we do not condone the conduct of this employe in leaving the place of his assignment, dismissal from the service is out of all proportion to the violation. The record shows that claimant was disciplined twice previously for similar offenses. This would justify more severe punishment than if claimant was a first offender but it does not justify dismissal. Claimant has been in the service of the carrier since January 16, 1948. He appears to have been a good workman. He was dismissed from service on June 26, 1953. The purposes of discipline have been served. Claimant is entitled to be returned to service with all seniority rights unimpaired without pay for time lost.

AWARD

Claimant returned to service with seniority rights restored without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1954.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 1830

The record in evidence shows the petitioner was reprimanded for leaving his work without permission on September 9, 1948, disciplined by actual suspension for thirty (30) days for failure to report for duty at the proper time on April 29 and 30, 1952, falsifying time report and being observed in a saloon during the hours of his tour of duty on April 29, 1952. As a result of that occurrence he was given to understand that such actions in the future would be considered sufficient cause for dismissal. Notwithstanding his being on notice that future infractions of the rules may cause dismissal, on May 26, 1953, he again left his assigned duties without permission and again falsified his time card. For these latter offenses, and considering past infractions of the rules, he was dismissed from the service on June 25, 1953. There is no attempt on the part of the petitioner to deny the charges as made, they having been readily admitted. It is obvious the claimant showed a complete disregard of his obligations and responsibilities as an employe, yet the majority erroneously reached the conclusion the discipline assessed was too severe.

The record is entirely devoid of any evidence that the carrier acted arbitrarily, capriciously, or in bad faith.

The findings and award are clearly a substitution of the judgment of the majority for that of the carrier, an action they have no authority to take and which is contrary to the principle enunciated continuously in awards under similar circumstances issued by all divisions of the National Railroad Adjustment Board. For this reason we dissent.

D. H. Hicks
J. A. Anderson
R. P. Johnson
T. F. Purcell
M. E. Somerlott