

Award No. 1860
Docket No. 1735
2-UP-CM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement advanced Carmen Helpers D. W. Farr and C. J. Vest were unjustly discharged from the service on August 19, 1953 and that accordingly the Carrier be ordered to reinstate them to all service rights with compensation for all wage losses retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: The Union Pacific Railroad Company, hereinafter called the carrier, employed D. W. Farr and C. J. Vest, hereinafter referred to as the claimants, at Kansas City, Kansas since October 12, 1950 and September 27, 1949 respectively, and at the time of their dismissal they were regularly assigned on the day shift Fridays through Tuesdays, with rest days Wednesday and Thursday.

These claimants were summoned on July 30, 1953 by the carrier's general car foreman to appear at his office at 10:00 A. M., Monday, August 3, 1953, for a hearing on the charges stipulated in the copies of letters submitted herewith and identified as Exhibits 1 and 1-A, notwithstanding that copies of the transcript of the good personal record of each claimant are submitted herewith and identified as Exhibits 2 and 2-A.

The hearing of these claimants was held as scheduled, and copies of the transcript record thereof are submitted herewith and identified as Exhibits 3 and 3-A. However, the carrier's master mechanic made the election on August 9, 1953 to dismiss these claimants from the service and which action is affirmed by the copies of letters addressed respectively to the claimants, submitted herewith and identified as Exhibits 4 and 4-A.

This dispute has been appealed to officers of the carrier up to and through the "highest designated railroad official" with the consequence that he has declined to adjust it.

The agreement effective September 1, 1949 is controlling.

responsibility by reimbursing them for time lost as requested by the employees.

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.

On Thursday, July 23, 1953 claimants were apprehended in the Kansas City, Mo., yards of another carrier, the Rock Island, while in the process of taking wheat lying on the ground, and which had fallen from one of the cars. Claimants were off duty at the time. The Rock Island turned them over to the Kansas City police. The next day both employes pleaded guilty to the charge of petit larceny and trespassing, and were fined \$50.00 each in Police Court. Upon being advised of these events, respondent carrier charged claimants with violation of Rule 700 of the Rules and Instructions of the Motive Power and Machinery Department. Pursuant to subsequent investigation on the property, claimants were dismissed from service on August 19, 1953.

Rule 700 reads:

"Employes who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, will not be retained in the service."

Organization contends claimants were dismissed without just cause, since it asserts the incident in question was of a trifling nature, occurred outside claimants' hours of employment and off the premises of respondent carrier, and did not injure said carrier or any person. Carrier responds it is well established that management may properly discipline employes for infractions while off duty.

It is obvious that had the theft occurred on respondent's property and while claimants were on duty, they would have been properly subject to discipline, and would have been in violation of Rule 700. The only question, then, is whether carrier was unjustified in applying Rule 700 to the present case because claimants were off duty and were apprehended while in the process of appropriating property for which another carrier was responsible. We do not think it was unjustified in so doing. Nor can we find any basis for setting aside the discipline here imposed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1954.

DISSENT OF THE LABOR MEMBERS TO AWARD 1860

Since the claimants had committed no act against the carrier the majority erred in holding the carrier's application of Rule 700 was proper in the instant case. Accordingly carrier acted arbitrarily and in abuse of discretion in discharging claimants from the service.

**R. W. Blake
C. E. Goodlin
T. E. Losey
Edward W. Wiesner
George Wright**