

Award No. 1910
Docket No. 1764
2-CNO&TP-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21 RAILWAY EMPLOYEES'
DEPARTMENT A. F. of L. (Electrical Workers)**

**THE CINCINNATI, NEW ORLEANS AND TEXAS
PACIFIC RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement Electrician F. A. Chamberlin was unjustly suspended on March 10, 1954 and discharged from the Carrier's service on March 16, 1954.

(2) That accordingly the Carrier be ordered to restore the aforementioned Electrician to service with seniority and vacation rights unimpaired and compensate him for all time lost since March 10, 1954.

EMPLOYEES' STATEMENT OF FACTS. Electrician F. A. Chamberlin, hereinafter referred to as the claimant, was hired by the carrier on June 6, 1918, as an electrician helper at its Chattanooga, Tennessee, shop and he was promoted to electrician on April 4, 1920, and has been in the continuous service of the carrier since that date until March 10, 1954, when he was suspended and subsequently discharged on March 16, 1954. His regular assigned hours were on March 10, 1954, Monday through Friday, rest days of Saturday and Sunday, from 7:00 A. M. to 3:00 P. M.

Claimant Chamberlin was performing his usual duties on Diesel-Electric Unit No. 4322 of inspecting "B" units and batteries on March 10, 1954, in the carrier's Diesel Shop located in Chattanooga, Tennessee, and while another electrician was spraying the main generator of this unit with mineral spirits the claimant went underneath the unit and continued to perform his duties as an electrician. At 11:45 A. M., this date, the claimant ate his lunch and at work time 12:00 Noon returned to the unit for the purpose of inspecting the high voltage cabinet and was so engaged when he claims that he was overcome by fumes and does not remember anything further until aroused a few minutes later by the electrician foreman and was accused of "loafing, sitting down and being in the act of sleeping" by General Foreman J. C. Waddle, who required this man to check out immediately. The claimant reported the incident to the chairman of the electrical workers' local committee and in company with the local chairman and another member of the committee, the claimant called upon the general foreman in the master me-

(4) THERE IS NO BASIS FOR EXTENDING LENIENCY.

The principle is well established that the Adjustment Board is empowered only to decide disputes in accordance with the agreement between the parties to it; also that the carrier is restricted in discharging employes only to the extent that it has agreed to restrict itself by the terms of such agreement. The Adjustment Board, in these circumstances, has no authority to extend leniency. That is the sole function of management and was so recognized in First Division Award No. 12503, in which it was held:

“Extending leniency and reinstating a former employe who has been justly disciplined for a violation of the company rules is a function lodged in management and not in this Division.”

When an employe has been dismissed from the service for cause, as here, he cannot be reemployed except as a matter of leniency. There is no basis for extending leniency to Mr. Chamberlin. He has been reprimanded on numerous occasions for various derelictions and has been removed from the service on two occasions for good and sufficient reasons. As evidence of his derelictions, there is submitted herewith and identified as carrier's Exhibit B, statement dated April 13, 1951, made by Electrician Foreman Brown, in connection with work performed by Mr. Chamberlin, which is self-explanatory. Also submitted, is similar statement, identified as carrier's Exhibit C, dated August 3, 1953, made by Mr. J. C. Waddle, general foreman, which is self-explanatory.

In addition to the above statements, and to refute the contention of Mr. Chamberlin that the general foreman displayed a hostile attitude toward him, there is submitted herewith and identified as carrier's Exhibit D, photostat of statement made by General Foreman J. C. Waddle on or about March 10, 1954, in connection with Mr. Chamberlin's service. Photostat of similar statement made by Electrician Foreman Gary on March 10, 1954, marked carrier's Exhibit E, and made a part hereof, is also submitted.

All Mr. Chamberlin's prior derelictions were fully considered in determining the action to be taken after he was found loafing and asleep on the job on March 10, 1954. Under the circumstances, and in view of his record, no action other than dismissal would have been justified.

It is thus obvious that the carrier has no reason to extend leniency. The Board is powerless to do so.

CONCLUSION

Electrician Chamberlin, having been proven guilty of loafing and sleeping on duty, was dismissed for just and sufficient cause. Such action was fully supported by the agreement between the parties hereto. Under the circumstances, therefore, a denial award is clearly in order.

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 electrician was discharged for loafing and sleeping on duty on March 10, 1954.

The statements of several witnesses given at the investigation of a certainty justify the conclusion that claimant was found and for some ten minutes observed asleep, sitting on the platform in front of the high voltage cabinet in the Diesel engine in which he had been working. It happened about 1:30 P. M. shortly after his lunch time. Reasonable penalty was justified.

His prior record, properly considered in imposing penalty, shows that on June 30, 1950 he was discharged for reading a newspaper while on duty and restored to service on July 12, without pay for time lost. On January 25, 1951 he was again discharged for failure properly to perform his duties but was restored to service one week later with pay for time lost. In April, 1951 and again in August 1953 he was reprimanded by his electrical foreman for negligent performance of his duties.

Had his misconduct now causing his discharge consisted of negligence in performance of his inspection duties, in view of his past record it might well have justified the drastic penalty imposed. But there was no showing here of incompetence or negligence in the performance of his duties, nor of delaying the work of others, nor of endangering others or himself; and it may well be that his drowsiness was brought on at least in part by the fumes of mineral spirits in the unit.

Considering all these things, and claimant's long years of service, the penalty was arbitrary, and out of all proportion to the offense. The loss of time claimant has been out of service constitutes adequate penalty.

AWARD

Claim sustained for restoration to service with seniority and vacation rights unimpaired. Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1955.