

Award No. 2028

Docket No. 1878

2-UP-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Districtman J. W. Rodda was unjustly dealt with when he was discharged without being afforded due process under the terms contained therein.

2. That accordingly the Carrier be ordered to restore the aforesaid Districtman to service with seniority rights unimpaired and paid for all time lost as a result thereof.

EMPLOYEES' STATEMENT OF FACTS: J. W. Rodda, hereinafter referred to as the claimant, was employed by the carrier as districtman with headquarters at Rupert, Idaho. His duties were to repair and maintain telegraph and telephone apparatus, pole lines, wires and cables related thereto. His tour of duty was monthly, having been assigned to this position on Telegraph Department Bulletin No. 12 of Seniority District No. 2, copy of which is submitted as Exhibit A. This position was assigned claimant as result of his bidding for said position as advertised for bids on Seniority District No. 2, Telegraph Department Bulletin No. 11, copy of which is submitted as Exhibit B.

The claimant's service record is submitted herewith and identified as Exhibit C.

The claimant was cited for investigation and notified to appear for investigation by superintendent of telegraph, Mr. G. R. Van Eaton, on October 21, 1953, in his letter of October 17, 1953, which reads as following:

"Dear Sir:

Please report at the office of Assistant Superintendent, Idaho Division, Room 210 Union Pacific passenger station Pocatello, Idaho, on October 21, 1953, at 10 A. M. for investigation and hearing on charge that you were under the influence of intoxicants at Twin Falls about 1:45 P. M. October 16, 1953, and were absent from duty

IN CONCLUSION: Rodda's guilt of the rule violations for which he was dismissed was clearly established by the testimony at the investigation. The disciplinary assessment and appellate procedure, to which objection is now made, was not in any way a violation of the agreement, but on the contrary was in strict conformity with the established and accepted practice contemplated by the parties at the time of the negotiation of the current Agreement and consistently approved by the organization until the date this present objection was first raised.

Under these circumstances, there is no merit to this present claim, and it is respectfully requested that it be denied.

The carrier submits that the discipline was neither unjust nor unduly severe. It respectfully requests this Board not to overrule the considered judgment of management in this case nor to absolve the claimant of his responsibility by reimbursing him for time lost and reinstating him 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 employee or employees involved in this dispute are respectively carrier and employee 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.

The facts of record indicate that the claimant was discharged following an investigation. The basis for discharge was the decision of the carrier that the evidence brought out at the investigation was of such nature as to show that claimant was guilty of violation of Operating Rules G and 702. The investigation was conducted by Assistant Superintendent Burnett and the claimant was dismissed by letter from Superintendent of Telegraph G. R. Van Eaton dated October 26, 1953.

Appeal was made through the usual channels, basis of appeal being that the determination of claimant's guilt was improper in that the investigation did not show claimant to be guilty.

On April 6, 1954, the general chairman wrote a letter to the Superintendent of Telegraph stating that, in view of the fact that the Superintendent had declined the request for reinstatement of the claimant, the general chairman "now" felt free to process the claim to the National Railroad Adjustment Board.

It was not until September 24, 1954, that the general chairman wrote to the Superintendent and for the first time apprised the Superintendent that the claim had been approved for referral to the Second Division of the National Railroad Adjustment Board on the basis that claimant had not been afforded due process under the terms of the agreement. The contention as to lack of due process was based on the complaint that the Superintendent, as the highest carrier official for appeals, had discharged claimant, thereby denying claimant his right of appeal.

The record clearly indicates to this Board that the claim as now before us was an after-thought and was not handled within the time limits as set forth in the agreement.

It is our opinion that the claim is improperly before this Board. The procedural requirements provided for in the effective agreement were not adhered to and as a consequence render us without authority to interpret a

provision of the agreement which was not handled on the property in accordance with the provisions of the existing agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1955.