Award No. 2204
Docket No. 2028
2-AT&SF-CM-'56

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.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—Coast Lines

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspector Ernest M. Frost was unjustly dismissed from the service effective January 19, 1955 until May 5, 1955.

2. That, accordingly, the carrier be ordered to make Car Inspector Ernest M. Frost whole by additionally compensating him from January 19, 1955 to May 5, 1955 inclusive, at the applicable rate for all time lost as a car inspector.

EMPLOYES' STATEMENT OF FACTS: Car Inspector Ernest M. Frost, hereinafter referred to as the claimant was regularly employed, bulletined and assigned as such at Barstow, California, work week of Monday through Friday, working hours 3:00 P. M. to 11:00 P. M., rest days of Saturday and Sunday, prior to being removed from service on January 19, 1955.

The carrier's superintendent of shops, D. L. Quaney, summoned the claimant to appear for a formal investigation at 9:00 A. M. August 19, 1954, on charges of violation of Rule 20, under the General Rule 2626 Standard, on August 3, 4, 5 and 6, which is affirmed by letter dated August 16, 1954, copy submitted herewith and identified as Exhibit A.

The investigation was held as scheduled and a copy of the transcript of the evidence furnished the representative by the carrier is copy submitted herewith and identified as Exhibit B.

The representative of the claimant protested the use of the ex parte general rules from 2626 Standard Booklet as not being a part of the negotiated agreement between the employes and the carrier representatives. This ex parte Rule 20, reading as follows:

"Employes must obey instructions from the proper authority in matters pertaining to their respective branches of the service.

A. Yes, that is the same as that copy I have.
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Q. Mr. Frost, you realize the two counts which they convicted you of and for which you were duly sentenced do not bring credit to your fellow employes or to the business of the Santa Fe for whom you are working, do you not?

A. Yes."

that he had been found guilty of two counts of felony. Furthermore, Mr. Frost answered in the affirmative when asked at the close of the investigation if he felt that it had been held in a fair and impartial manner. Mr. Frost's representative felt the same way except for his protest on Rule 21 of Form 2626 Standard.

The investigation speaks for itself and Mr. Frost was removed from service solely on the basis of information developed therein. Furthermore, Superintendent of Shops Quaney did not make the decision to remove Mr. Frost from service, that being done by a higher officer.

The carrier is uninformed as to the arguments the Brotherhood may advance in its ex parte submission, and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are necessary in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute.

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.

This claim involves Car Inspector Ernest M. Frost. Claimant was dismissed from carrier's service as of January 19, 1955 but reinstated as of May 5, 1955 with seniority unimpaired. The organization asks that claimant be compensated for all time lost while out of carrier's service on the grounds that he was unjustly dismissed.

Claimant was regularly assigned to work at Barstow, California, with seniority as a car inspector dating from September 4, 1922, although he had been an employe in carrier's signal department prior thereto. He had a clear record until the trouble developed which is hereinafter set forth.

Claimant's first difficulty with the carrier developed when, by letter dated August 16, 1954, he was instructed to appear for a formal investigation for violation of Rule 20, under General Rules, Form 2626 Standard. It should here be stated that when an employe is entering the service of a carrier, and thereafter, as long as he is an employe, he is subject to and works under and pursuant to the terms of any collective bargaining agreement negotiated with the carrier by the duly accredited representatives of the class or craft of employes to which he belongs but, at the same time, he is also subject to any reasonable rules promulgated by the carrier which are not in conflict with law or the terms of the collective bargaining agreement. See Award 1581 of this Division.

At the hearing held on August 19, 1954 it was the claim of carrier that claimant had violated its Rule 20 by being absent from his regularly as-

signed duties on August 3, 4, 5, and 6, 1954 without having obtained proper authority for doing so. The evidence adduced at the investigation established the fact that on Tuesday, August 3, 1954, claimant had been arrested shortly before reporting for work, which he was supposed to do at 3:00 P. M.; that he notified his immediate superior of that fact, who gave him permission to be off; and that he returned to work as soon as he was able to do so after being released on bail, returning to work on Monday, August 9, 1954.

When it appeared, from the evidence adduced, that claimant had authority to be off carrier took no further action but left claimant on his job.

On December 20, 1954 claimant was advised by letter that he was being charged with "violation of Rule 21 under General Rules, Form 2626 Standard, on basis of 'immoral charges' " and that a formal investigation of the charges would be held in the office of the Superintendent of Shops in Barstow on Wednesday, December 22, 1954.

Rule 21, above referred to, provides, insofar as here material, that:

> "Employes must not be * * * immoral * * *. They must conduct themselves in a manner that will not bring discredit on their fellow employes or subject the railroad to criticism and loss of good will."

At the hearing held on December 22, 1954 it was shown that claimant had been arrested on August 3, 1954 because a grand jury had returned an indictment against him for procuring, pandering and pimping, all felonies under the penal code of California; that while he entered a plea of not guilty thereto, however, upon trial being held he was found guilty of pimping on two separate counts; and that, on November 26, 1954 he was put on probation for a period of three (3) years subject to certain conditions therein set forth, which among others, required him to sell the business he was then engaged in and to not operate a similar business, and to pay a fine of $200.00. The record of his conviction established claimant had been guilty of conduct which justified his dismissal under the charges made against him.

We shall briefly cover certain procedural matters of which complaint is made.

Should the letter advising claimant that certain charges were being made against him have stated the date when the alleged "immoral charges" therein complained of occurred? Rule 33(e) of the parties' agreement relating to discipline provides:

> "Prior to the investigation, the employe alleged to be at fault shall be apprised of the charge * * *."

We think, under the circumstances here shown, the letter of D. L. Quaney, Superintendent of Shops, dated December 20, 1954, and addressed to claimant fully met the requirements of this provision.

Rule 33 (d) of the parties' agreement provides:

> "No employe will be disciplined without first being given an investigation which will be promptly held, * * *."

Claimant was found guilty and thereafter, on November 26, 1954, placed on probation; the charge of which carrier found he was guilty was made against him on December 20, 1954; he was tried on December 22, 1954, and, by letter dated January 19, 1955, his services were terminated as of that date. We find the investigation was promptly held within the meaning of the rule.

From the record, as a whole, we find claimant had a fair and impartial hearing at the investigation held on December 22, 1954.

Claimant did not seek to release himself from the onus of guilt by appealing therefrom but proceeded, under the provisions of Section 1203.4 Penal Code of the State of California, to have his probation terminated. This section of the statute does not exonerate the party of the crime of which he has been convicted. That can only be done by appeal, which the claimant did not do. The purpose of the statute is to permit the court to relieve a party, who has plead guilty or been convicted of a crime and thereafter placed on probation, of the onus of such record in case the defendant, so placed on probation, has fulfilled the conditions thereof or shall have been discharged therefrom.

Under the situation here disclosed carrier was very lenient with claimant by returning him to service and certainly under no obligation to pay him for the time he was out of service because as we have already stated, he was properly removed therefrom because of the trouble he had gotten himself into.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1956.