

Award No. 2239
Docket No. 2016
2-L&N-F&O-'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. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Tractor Operator Reubin Davis was unjustly dismissed from the service on June 10, 1954, Birmingham, Alabama (Boyles Shops).
2. That accordingly he is entitled to be reinstated to his former seniority rights with compensation for all time lost, retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Tractor Operator Reubin Davis, hereinafter referred to as the claimant, was employed as such by the carrier on August 17, 1942 with a continuous seniority dating therefrom. His regular assigned hours were from 7:00 A. M. to 3:30 P. M., Monday through Friday, with Saturday and Sunday rest days.

The claimant was summoned to report for an investigation on May 18, 1954 on the charges of insubordination and refusing to perform duties as instructed by his supervisor on May 7, 1954.

Mr. J. B. Quiggins, Master Mechanic, notified the claimant on June 10, 1954 that he was dismissed from the service of the company effective as of that date.

This dispute has been handled with the proper carrier officers from the bottom to the top, with the result that the highest designated officer has declined to settle it.

The agreement effective June 1, 1942, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier produced no evidence in the transcript of hearing conducted on May 7, 1954, which could

on help which was not needed. No action was taken in that case. In 1943 he was reprimanded by former Master Mechanic Cremer for being insubordinate to his supervisors. On October 24, 1953, Davis accused Assistant Car Foreman Hollingsworth of insulting him. Investigation developed no grounds for the allegation. And on January 27, 1954, he was talked to by Master Mechanic Quiggins and Assistant Master Mechanic May concerning his safety record and his attitude toward his supervisors. Notwithstanding all of this, on May 7, 1954, he flatly refused to comply with the instructions of his foreman.

In conclusion, carrier reiterates that there is ample evidence in the record to substantiate the charges against Tractor Operator Davis. Further, that in view of the seriousness of his offense, and his prior record, his dismissal was entirely justified and should stand. In this connection attention is invited to the following excerpts from awards of this and other divisions of the Adjustment Board:

"This Board is loathe to interfere in cases of discipline if there is any reasonable grounds upon which it can be justified." (Second Div. Award 1109)

". . . it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (Second Division Award 1323)

"In proceedings such as these we do not examine the record of testimony to determine weight of credibility. We look for substantial and satisfactory support, and when that is found our inquiry ends. Awards upon this point are so numerous as to make citation of any of them unnecessary." (First Div. Award 14552)

". . . Our function in cases of the kind here involved, as we understand it, under awards of this Division of the Board so well known and established that they require no citation or further consideration, is not to pass upon the credibility of the witnesses or weigh the evidence but to determine whether the evidence is substantial and supports the charges as made. If it is we can not substitute our judgment for that of the carrier and it is our duty to leave its findings undisturbed unless it is apparent its action is so clearly wrong as to amount to an abuse of discretion." (Third Division Award 5401)

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.

Tractor Operator Reubin Davis contends he was unjustly dismissed from carrier's service as of June 10, 1954. Based on that contention he asks for reinstatement to service with seniority rights fully restored and compensation for all time lost.

Davis had been employed by the carrier on August 17, 1942 as a laborer at its Birmingham, Alabama, Shops. At the time of his difficulty he was assigned to the position of tractor operator and was working in carrier's

Boyles Shops at Birmingham. By letter dated May 10, 1954 carrier's Master Mechanic J. B. Quiggins notified Davis that he was "charged with insubordination and refusing to perform duties as instructed by your supervisor on Friday, May 7, 1954." Investigation of the charges was held on May 18, 1954 in the Master Mechanic's office and, as a result thereof, Davis was notified by letter from the master mechanic, dated June 10, 1954, that "You are hereby discharged from the service of the company account insubordination and refusing to perform duties as instructed by your supervisor on Friday, May 7th, 1954."

It is contended that the evidence adduced at the investigation is not sufficient to support a finding that Davis is guilty of the charges that were filed against him nor does it show he refused to perform any work he was then physically able to perform. The transcript of the evidence adduced at the investigation held on May 18, 1954 established that on Thursday, May 6, 1954, the tractor Davis was assigned to operate had to go to the shop for repairs and was still there when Davis reported for work on the morning of Friday, May 7, 1954 at 7:00 A. M.; that sometime thereafter Davis was directed to report to Foreman S. O. Hollingsworth, since the tractor he was assigned to operate was still in the shop for repairs; that Hollingsworth directed Davis to assist other laborers in rolling mounted wheels from track 7 to the wheel house storage department; and that Davis replied "I don't want to take those fellows' jobs. I won't roll wheels. I will go home."

Supervision of employees is in management and the instructions of those in charge of the work must be obeyed. While it was entirely proper, under the parties' agreement, for carrier to have Davis perform the work which he was instructed to do the foregoing rule would apply even if it were not. It is the carrier's duty to comply with the provisions of collective bargaining agreements in having its work performed. If, in doing so, it violates the provisions thereof the Railway Labor Act provides the recourse that the employe or organization may pursue. Refusal to carry out such instructions, with rare exceptions not here applicable, constitute insubordination for which an employe may be properly disciplined.

It is apparent that Davis sought to carry out the duties of the job to which he had been assigned by using a tractor operated by Peter Jarrett in an adjoining department. This, however, was no justification for refusing to perform the work he was directed to do by Foreman Hollingsworth.

Davis also claims he was not physically able to do the work he was directed to perform by Foreman Hollingsworth and so informed Hollingsworth at the time. It is evident that Davis did not so suggest until he was in the office of Master Mechanic Quiggins and fully realized the seriousness of the difficulty he was getting into. But, in any event, the furuncle (boil) which he had on one of his arms was not of such a character that it would have interfered with his performing the duties which he had been directed to perform.

Having come to the conclusion that the evidence fully supports the charges made and that Davis was guilty of insubordination we then have the question, was dismissal a reasonable punishment under all the facts?

Carrier speaks of Davis' past record but we find no record of where he has been previously found guilty of any charges that had been made against him. Approximately twelve (12) years of service should not be treated lightly. Considering all the circumstances surrounding the situation we do not think they justify a dismissal. Davis has now been out of service for over two (2) years. Surely if punishment will ever rectify an employe's attitude toward his supervisors, being held out of service for that length of time should have that effect. It is our considered judgment that to affirm this dismissal would approve an unreasonable imposition of punishment. We think Davis should now be restored to carrier's service with seniority rights fully restored but denied any compensation for the time he has been out of carrier's service.

AWARD

Claim for restoration to service with seniority rights fully restored
sustained but claim for compensation for time lost denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1956.