Award No. 2293
Docket No. 2087
2-ACL-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. 42, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

and

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(a) That, under the controlling Agreement, Car Repairer Helper W. J. Vaught was unjustly dismissed from the service.

(b) That he be restored to service with seniority rights unimpaired and compensated for time lost.

EMPLOYES' STATEMENT OF FACTS: W. J. Vaught was employed by the Atlantic Coast Line Railroad in its Wilmington, N. C. Shop April 17, 1942, as car repairer helper. He worked continuously, principally on the train yard as car oiler and packer until September 5, 1953, when he was arrested in the afternoon of the same date and held for questioning in the death of Edward Beall which occurred about 2:30 A. M. Sept. 5, 1953.

While in the custody of the city police and before making any statement, Vaught requested the authorities to notify Mr. E. E. Floyd, the foreman of the car department (Vaught's immediate foreman) and ask him and a member of the railroad Property Protection Department to come to the police station so that he might make his statement in their presence.

Vaught's request was granted and Mr. E. E. Floyd, Mr. "Bob" Matthews and George Nance reported to the police station and, in their presence, Vaught made his statement to the authorities, excerpts of which are submitted herewith and identified as employes' Exhibit B.

Four days later, September 9, 1953, as soon as the necessary legal formalities could be complied with, Vaught was released on $1,500.00 bond. He reported immediately to his foreman, Mr. E. E. Floyd, for duty but was not permitted to return to work. A few days later Vaught made written request on his foreman to return to work. No reply was ever received to this request and Vaught was continued to be denied the right to return to duty, this in the absence of any charges or investigation.

shop hours. Spoiling or wasting of material will be considered sufficient cause for discipline."

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.

It is claimed Car Repairer Helper William J. Vaught was unjustly dismissed from carrier's service. In view thereof the organization requests Vaught be restored to service with his seniority rights unimpaired and compensated for all time lost.

Claimant was employed by carrier in its Wilmington, North Carolina, Shop on April 17, 1942, as a car repairer helper. He continued to work for carrier until Saturday, September 5, 1953, primarily in its train yard as a car oiler and packer. On Saturday, September 5, 1953, about 3:00 P. M. he was arrested for questioning in connection with the death of one Edward Beall, whose death had occurred at about 2:30 A. M. on the same day. Claimant, who was due to report for work at 4:00 P. M. on that day, called his immediate foreman, E. E. Floyd, and advised him of what had happened. Claimant made a statement to the authorities in the presence of Floyd, who had apparently come to the police station. It appears that about 2:30 A. M. on September 5, 1953 claimant had carelessly and negligently discharged his 22 caliber automatic rifle some five or six times in the direction of a car containing four young white men, including Beall, and that as a result Beall was killed. On September 9, 1953 claimant was released on bond. Thereafter, during trial on October 7 and 8, 1953, he entered a plea of guilty to the charge of manslaughter and was thereupon sentenced to eighteen (18) months in prison. After serving five (5) months and fifteen (15) days thereof claimant was, on March 24, 1954, paroled. He then, on March 30, 1954 made a written request upon carrier to return him to work.

On April 8, 1954 carrier made the following charges against claimant:

"with being absent without any authority from your regular assignment since September 5, 1953, in violation of Rule 32, Paragraph B, and Rule 13 of the current agreement between the A.C.L. Railroad Company and employes of the Mechanical Department; also in violation of Rules 1, 4 and 26 of the Rules and Regulations for the government of Shops."

An investigation or hearing was had on these charges on April 12, 1954 and, based thereon, carrier found claimant guilty thereof and notified him by letter dated April 23, 1954 that he was being dismissed. It is from this action of the carrier that the claim here presented has been progressed.

First carrier claims the filing of a declaration of intent by the organization to the effect that within thirty (30) days it intends to submit a dispute to this Division does not meet the requirements of Section 2 of Article V of the parties' agreement of December 15, 1954 and therefore the dispute is barred. Such declaration of intent, dated December 13, 1955, was filed with the Division and, subsequent thereto, on January 12, 1956, an ex parte submission was filed. This same question was raised in Docket 2152 on which our Award 2292 is based. What we held therein is here controlling. We find this contention to be without merit.

In considering the dispute on its merits we again remind the parties that carrier is limited to the evidence adduced at the hearing provided for by Rule 21 of the parties' effective agreement in determining whether or not the employe is guilty or not guilty of the charges which it has made against him. Consequently neither party is free to supplement that record subsequent to the hearing or investigation. In other words, all evidence either party relies on should be produced thereat as we are necessarily limited thereto in determining whether or not the action of the carrier, based thereon, is unjust.

Rule 13 of the parties' agreement provides as follows:

> "(a) An employe detained from work on account of sickness or for any other good cause shall notify his Foreman as early as possible, which should be in ample time for the Foreman to arrange for a man in his place if practicable.
>
> (b) When the requirements of the service will permit, employes upon written request will be granted leave of absence in accordance with the general regulations of the Company. An employe absent on leave who accepts employment with another employer will lose his seniority, unless special provisions have been made therefor by the proper official, and the local committeeman."

The hearing record shows claimant has not worked for carrier since September 5, 1953; that on September 30 he advised Mr. Williams and Mr. Floyd that he had been off since September 5 due to his own trouble in reference to slaying another party, which was being contested, and that he would stand trial in October 1953; that he stood trial on October 7 and 8 on a charge of manslaughter; that he plead guilty thereto; that he was sentenced to eighteen (18) months in prison; that his absence since September 5 was due thereto; that he was, at the time of his hearing, on parole; that he called Floyd, his immediate supervisor, before he gave a statement to the police; that he did not have permission from his supervisors to be absent from work; and that he never made a request therefor.

While it could be said that claimant was detained from work for good cause from September 5 to 9, 1953 and notified his foreman thereof as early as possible, as required by Rule 13(a), however, after September 9, 1953, when he was released on bond, there was no longer any good cause for his being absent therefrom without first having made a request to do so and being granted a leave by carrier for that purpose. See requirements of Rule 13(b). In this respect his letter of September 30, 1953, making application to resume his work with carrier, would not change the situation as he had then already been absent without good cause or by leave of carrier since September 9, 1953, and that condition continued while he was in prison.

In view of the foregoing we find the claim to be without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.