

Award No. 2438

Docket No. 2356

2-L&N-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Emmett D. Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement, Carman Helper W. E. Taft was unjustly dismissed from service on December 19, 1955, and

2—That accordingly the Carrier be ordered to restore the aforementioned Carman Helper to service with all seniority rights unimpaired and compensated additionally for all time lost subsequent to December 19, 1955.

EMPLOYES' STATEMENT OF FACTS: Carman Helper W. E. Taft, hereinafter referred to as the claimant, was employed as such (carman helper) at their DeCoursey, Kentucky, shops, May 12, 1953, after first being employed at Corbin, Kentucky, on December 29, 1945, as laborer and transferred to DeCoursey as such on August 20, 1952.

On November 23, 1955 the carrier's assistant superintendent wrote a joint letter to the claimant and Fireman E. O. Selby, charging the claimant with responsibility in connection with being on company property under the influence of intoxicant or drugs, creating a disturbance and threatening bodily injury to fellow employees.

On November 28, 1955, an investigation was held in the office of the assistant superintendent at Latonia, Kentucky concerning the charges. As result of investigation, under date of December 19, the carrier's superintendent issued Bulletin Notice No. 50 and letter of dismissal to the claimant.

The agreement effective September 1, 1943 as amended is controlling.

POSITION OF EMPLOYES: It is submitted that there is nothing, whatsoever, in the transcript of investigation which would prove the charges placed against the claimant by the carrier. There was no carrier official involved, none saw the claimant on the property at any time on the date in question. The claimant created no disturbance, neither did he threaten bodily injury to anyone.

It should be particularly noted that the entire transcript of investigation contains considerable conflict, leading questions and contradictions as well as

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 Division Award 14552, Referee Mabry.)

The carrier submits that the dismissal of Taft was not arbitrary, unreasonable or unjust. It was not in violation of any provision of the current agreement and should stand. A dismissal for cause terminates the employment relationship and the dismissed employee has no enforceable right to be reinstated or rehired by the carrier. Reinstatement or rehire of a former employee dismissed from service is within the discretion of the employer. (First Division Award No. 14421, Referee Whiting.) Also see First Division Awards Nos. 15316, 15317 and 15318, in which it was held:

"The Board is without power to pass upon the propriety of the penalty imposed or to direct the Carrier to reinstate or rehire. The principle laid down in Awards 13052 and 14421 is in all respects reaffirmed and controlling in this case."

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 this dispute were given due notice of hearing thereon.

Rule 34 of the governing agreement provides an employee a "fair hearing", notice of the precise charge, and opportunity to secure witnesses. The transcript of the investigation granted claimant Taft under this rule, has been completely and carefully examined by this Board. The arguments of the parties, including the cited awards interpreting investigative rules, have been heard and considered.

Based on the record, the rules, and the arguments, this Board concludes that the claimant has not shown that he was not given a fair hearing, after notice and opportunity to secure witnesses. The carrier's decision to discharge the claimant was not an abuse of discretion, nor was it arbitrary or capricious.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May, 1957.