

Award No. 2549

Docket No. 2321

2-MP-FO-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Firemen and Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Laborer Calvin C. Cook was unjustly suspended from service October 31, 1955 and dismissed from the service of the Carrier on November 28, 1955.

2. That accordingly Carrier be ordered to reinstate this employee with all seniority rights unimpaired and with pay for all time lost retroactive to 5:15 P. M., October 31, 1955.

EMPLOYEES' STATEMENT OF FACTS: On September 6, 1946, the carrier employed Calvin C. Cook as a laborer at Osawatomie, Kansas. Calvin C. Cook, hereinafter referred to as the claimant, had been continuously employed at Osawatomie, Kansas as a laborer for nine (9) years, establishing a satisfactory service record and was assigned to work five days per week on the 3 P. M. to 11 P. M. shift.

On November 28, 1955, Superintendent V. C. Halpin advised the claimant he was dismissed from the services of the carrier for insubordination, refusing to perform regular laborer's duties assigned to him at 5:15 P. M., Monday, October 31, 1955. See employees' Exhibit A.

Formal investigation was conducted under date of November 22, 1955 in master mechanic's office, General Foreman J. M. Johnson conducting the investigation; copy consisting of 27 pages is submitted herewith and identified as employees' Exhibit B.

POSITION OF EMPLOYEES: The carrier did not establish that the claimant was under the influence of intoxicants, that he failed to perform the duties assigned to him, nor did they establish that the claimant struck the first blow. They did, however, establish that Foreman King had assigned the claimant to perform service under the supervision of Foreman A. M. Davis, diesel foreman.

in the manner provided for that purpose by The Railway Labor Act. To hold otherwise would condone attempts by employees to take over this duty of management."

It follows that the claimant's repeated refusal to comply with instructions given to him by Foreman King warrants the action taken by the carrier in dismissing him from its service and, since discipline is the prerogative of management, your Board should refuse to disturb the discipline which has been assessed.

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.

The claimant, a laborer, was suspended by the carrier on October 31, 1955 and dismissed from service November 28, 1955 for insubordination. There has crept into the record a discussion of intoxication which is of no real consequence, since the record clearly establishes that the reason given for dismissal was insubordination.

An investigation was held on the property and a transcript of the testimony offered by many witnesses, including the claimant, has been made a part of the record. Late in the afternoon of Monday, October 31, 1955 a foreman asked the claimant to remove some small blocks, about 3x5 inches, from a ramp so they would not be in the way of a mechanical sweeper. The claimant repeatedly refused to remove the blocks, giving as a reason that he first wanted to talk to another foreman for whom he usually worked. He advances no plausible reason why he felt it was necessary to consult with another foreman before doing the task requested of him by the first foreman. The task was simple, easy to perform and the order requesting him to do it was clearly understood. When the claimant was suspended for refusing to do the work his conduct became reprehensible. He scuffled with the foreman, in a state of admitted anger, and broke two (2) of the foreman's ribs. We find as a fact that the claimant was the aggressor in starting the scuffle, and that there was no provocation for his act.

We find that the claimant was insubordinate and he compounded his unauthorized act by committing an unprovoked assault and battery on his supervisor. Such conduct fully justifies discharge.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of July, 1957.