

Award No. 2609
Docket No. 2425
2-CMStP&P-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's dismissal of E. V. Broullire at Plummer Junction, Idaho from its service as an Electrical Worker (Lineman) effective July 1, 1955 to date constitutes this employe has been unfairly and unjustly dealt with under the current agreement.

2. That accordingly the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore this employe in the service with all rights unimpaired and with compensation retroactive to August 31, 1956 unless the said employe is restored to service before September 30, 1956.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the carrier, employed E. V. Broullire as a groundman and lineman apprentice in the year of 1945 on Lines East and, consequently, elected to elevate him on February 19th, 1947 to the position of telegraph lineman in its telegraph department on Lines West.

The carrier also elected in the year of 1949 to promote E. V. Broullire, hereinafter called the claimant, from the position of a telegraph lineman to the official status of a telegraph crew foreman and in which position he remained with considerable credit until after the occurrence of a motor car accident at Novara, Washington on June 8, 1955.

The carrier summoned this claimant to stand trial beginning at 10:00 A.M. on June 27, 1955 at Spokane, Washington—nineteen days after said accident—which is affirmed by the top half of page 1 of the submitted copy

The carrier maintains the claim for time lost should be denied on the basis it was not properly presented under the applicable Time Limitation Agreement and the request for reinstatement should be dismissed as not being a proper matter for consideration and beyond the authority of this Board.

The Second Division has consistently held that it will not disturb the discipline applied by the carrier unless it is arbitrary or capricious. Among other awards so holding, attention is invited to that part of the Second Division's Findings in Award No. 1817 reading:

"We adhere to the rule that if the evidence is substantial and supports the charges we will not disturb the findings unless it is affirmatively made apparent to us that carrier's action is so clearly wrong as to amount to an abuse of discretion. The Railway Labor Act does not prohibit a carrier from discharging employes for inefficiency or bad conduct. Nor does the collective agreement prohibit such action. It does limit the carrier to the extent that it may not arbitrarily or capriciously deprive an employe of his seniority rights. The carrier is held responsible for the safety of its employes and property and the public. Its right to guard against hazards which affect property damage and safety of employes and the public, cannot be questioned. It is only when it becomes arbitrary and unreasonable in its relation to its employes that this Board has authority to order corrective measures."

In the instant case, the accident was clearly the result of Mr. Broullire's carelessness and his failure to comply with operating rules. While it is true that no personal injuries were involved in this particular case, the potential for such injuries or deaths, as well as much more extensive property damage, was present.

Claimant Broullire's responsibility in connection with the charges preferred against him were properly and fully developed and he was dismissed from service for his responsibility in connection with those charges and properly notified accordingly. There has been no violation of the schedule rules. The actions of the carrier have not been unfair, arbitrary or capricious. The carrier, therefore, respectfully requests that its actions be not disturbed and that the claim be denied.

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 the dispute were given due notice of hearing thereon.

Claimant Broullire was employed as a groundman in 1945, advanced to a lineman in 1946 and promoted to line foreman of a telephone and repair crew in 1949. On July 1, 1955, he was discharged from service, after a hearing, for violation of the carrier's safety and operating rules. The incident that constituted the basis of the charge occurred while claimant was serving as foreman and involved the leaving of a motor car and two trailers unattended on the main line, as a result of which said equipment was struck by a train.

There is nothing to indicate that the claimant did not have a clear record as a groundman and lineman during his service as such or as a foreman until the aforementioned incident occurred. At the hearing he admitted the violation of the safety and operating rules involved, but pleaded by way of justification or mitigation that the accident resulted from the failure of employes in his crew to follow his instructions for the protection of the motor car and trailers while he was attempting to communicate by telephone with the division lineman to ascertain when a train might be expected.

The organization does not question the carrier's right to discipline the claimant as a foreman but argues that he should have been returned to his status as a lineman with seniority unimpaired. With this we are inclined to agree. There is nothing in the record to suggest that Claimant's future service as a lineman would in any way be inimical to the carrier's interests. The charge did not involve moral turpitude or unfitness for a lineman's duties. It is conceivable that a thoroughly competent and dependable lineman might be unqualified by temperament or otherwise for the responsibilities of a foreman, but the converse is not necessarily true. Earned seniority is a valuable right and it should not be taken away unless clearly and positively justified.

AWARD

The carrier is directed to reinstate the claimant as a lineman with seniority unimpaired but without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September, 1957.