

Award No. 2710
Docket No. 2531
2-WAB-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)
WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Helper F. R. Hinton (upgraded to carman temporary basis) was unjustly suspended from service April 12, 1956.

2. That accordingly the Carrier be ordered to compensate the aforesaid employe for the wage loss suffered on April 12, 1956.

EMPLOYEES' STATEMENT OF FACTS: Carman F. R. Hinton, hereinafter referred to as the claimant, was employed as carman helper September 8, 1948, and upgraded to carman temporary basis December 23, 1954, and his assignment of hours was 3:30 P.M. to 12:00 Midnight, with one-half hour lunch period, Monday through Friday with Saturday and Sunday rest days.

Under date of March 27, 1956, the claimant was notified to appear for a hearing at 10:00 A.M. March 29, 1956. A copy of said notification is submitted herewith and identified as Exhibit A.

Hearing was held on March 29, 1956. A copy of the hearing record is submitted herewith and identified as Exhibit B.

On April 11, 1956 Earl Eagleton, car shop superintendent, notified the claimant he was being suspended from service for a period of one (1) day which was April 12, 1956, copy of which is submitted herewith and identified as Exhibit C.

This dispute has been handled in accordance with the provision of the existing agreement effective June 1, 1939 as subsequently amended, up to and with the highest designated carrier official to whom such matters are subject to be appealed, with the result that this official declined to adjust the dispute.

Q. (Mr. Eagleton): "What was your purpose of being in the steel plant?"

A. (Mr. Hinton): "I went over to see Mr. Stephens, a welder, to see if I could get some aspirin."

Q. (Mr. Eagleton): "Did you see Mr. Stephens?"

A. (Mr. Hinton): "Yes sir."

Q. (Mr. Eagleton): "Do you have access to the first aid cabinet in the Machine Shop?"

A. (Mr. Hinton): "No sir."

Mr. Stephens, a welder, to whom Mr. Hinton referred in his testimony was found by the foremen to be away from his job and Stephens is the man whom they later found in the shower bath. It will be noted that Foreman C. J. Baldwin testified, (See page 4 of the transcript), that a box of first aid supplies was made available to night men, one of whom was Hinton, which made it unnecessary for Hinton to go to the steel car shop for aspirin.

Mr. Hinton stated in the hearing that he made use of the toilet at the steel car shop because the lights were out in the machine shop rest room. Testimony adduced at the hearing, (See page 5 of the transcript), proved that there was adequate light in the toilet room which served employees of the triple valve shop, and that those facilities were available to Hinton.

It is apparent that Hinton, along with other second shift employees, had left or was in the act of leaving company premises during assigned working hours without authority and then upon learning in some manner that the foremen were at the shop, he returned to the job. When questioned by the foreman as to where he had been he merely stated he had been in the steel plant and made no mention of having a headache and needing aspirin, as was later claimed in his defense by the committee.

The hearing held on March 29, 1956 was conducted in a fair and impartial manner and facts brought out at this hearing fully justify the disciplinary action taken against F. R. Hinton.

This Board has declared often that the measure of discipline is not a matter for its consideration and that the Board will not substitute its judgment for that of the carrier in disciplinary matters unless it can be shown that the carrier acted arbitrarily or in abuse of discretion. The evidence in this case shows conclusively that the carrier's action in assessing discipline, consisting of one (1) day suspension, against Mr. Hinton was not arbitrary or in bad faith, and was administered for just cause.

The contentions of the committee should be dismissed and the claim 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 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 said dispute were given due notice of hearing thereon.

In light of the record before it, the Board cannot conclude that the carrier acted arbitrarily or unjustly.

The evidence of record discloses no ground for disturbing the action of the carrier.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 6th day of December, 1957.