

Award No. 2963
Docket No. 3045
2-UP-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement Machinist John B. Cole was unjustly dismissed from the service of the Union Pacific Railroad Company June 13, 1956.

2. That accordingly the Carrier be ordered to restore Machinist John B. Cole in its service with all his earned rights intact and fully compensate him for all time he has lost since June 13, 1956.

EMPLOYEES' STATEMENT OF FACTS: Machinist John B. Cole, hereinafter referred to as the claimant, was employed by the carrier from May 29, 1951, to the date of dismissal on June 13, 1956. The claimant was ordered to appear for investigation on June 14, 1956. Copy of hearing record is submitted herewith and identified as Exhibit A.

The grievance of this claimant has been handled with each carrier official including the highest designated officer, without securing a satisfactory settlement.

The agreement of September 1, 1949, as amended, is controlling in this dispute.

Position of Employees:

It is submitted that this claimant was unjustly deprived of his service rights with the carrier on June 14, 1956 when the carrier failed in the hearing to establish irrefragable evidence of proof that the charges were true that he, the claimant, was in violation of Rule 700 of the Rules and Instructions of the Motive Power and Machinery Department reading as follows:

"Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct them-

engaged in a fight while on duty. The various Divisions of the Board have refused to condone fighting on the job and clearly required strong disciplinary action.

The imposition of appropriate discipline for rules infractions is a prerogative of management and actually serves the mutual interests of the carrier and its employes. Congress, in establishing the National Railroad Adjustment Board through the Railway Labor Act, never intended that the Board should interfere with the traditional right of management to impose discipline for violation of its operating rules. The Board has no authority to overrule a decision of management simply because it disagrees with the wisdom of the carrier's decision. The Board has consistently refused to substitute its judgment for that of management.

As an appellate tribunal in reviewing a case the Board does not usurp the functions of the carrier's officers or of the investigative body. It does not re-try the case or re-determine the facts. It does not look for proof beyond a reasonable doubt. It merely seeks substantial evidence to support the decision of the carrier. When that is found, its inquiry proceeds no further.

It is submitted that the docket in this case contains abundant evidence of a material and competent character. There is no basis for overturning the discipline in this case.

The claim in this docket has no merit and must 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 said dispute were given due notice of hearing thereon.

The Division after a review of the whole record finds no reason to disturb the discipline administered.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October, 1958.