

Award No. 3209
Docket No. 3002
2-GM&O-EW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Electrician D. S. Hendricks was unjustly treated when he was suspended from service and subsequently dismissed service of the Carrier without a fair and impartial hearing.

2. That accordingly the Carrier be ordered to restore Hendricks to service with seniority and all other rights restored and compensate him for all time lost, retroactive to July 29, 1957.

EMPLOYEES' STATEMENT OF FACTS: D. S. Hendricks, hereinafter referred to as the claimant, was employed as an electrician in the coach yard of the Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the carrier, at St. Louis, Missouri. He was first employed on January 4, 1947.

On July 23, 1957, the claimant was notified by letter to appear for investigation on July 29, 1957. Copy of letter of notification is submitted herewith and identified as Exhibit A.

The investigation was held on July 29, 1957, and transcript of same is submitted herewith and identified as Exhibit B.

Just prior to the close of the investigation, the claimant was notified verbally that he would be removed from the service of the carrier at the close of his tour of duty that day and his service with the carrier was terminated. This was confirmed by letter on August 9, 1957, copy of which is submitted and identified as Exhibit C.

The instant claim is entirely without merit and should be denied, and carrier prays your honorable Division to so find and award accordingly.

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.

Parties to said dispute were given due notice of hearing thereon.

A review of this docket, including the transcript of investigation and various exhibits, discloses a fair hearing and a just determination in the matter of the claimant's insubordination. The presence of Supervisor Rayfield was necessary because of his personal involvement and he had the right to have his representative, Mr. Berres, with him and to be given, as he was, a copy of the transcript.

Shouldering a supervisor, and then upon questioning, answering reluctantly, "Well, if I did, he deserved it anyway", proves insubordination conclusively.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1959.

DISSENT OF LABOR MEMBERS TO AWARD 3209

The carrier improperly permitted Mr. R. P. Berres, local representative of the Supervisors' Organization, who was not a witness to the incidents involved in the dispute and was in no manner involved, to sit in on the investigation, question the claimant and make biased recommendations as to the discipline that should be administered. This was seriously objected to by the claimant's representatives.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

R. W. Blake

C. E. Goodlin

T. E. Losey

E. W. Wiesner

James B. Zink