

Award No. 3525

Docket No. 3373

2-CNJ-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone, when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 72, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carman)**

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

DISPUTE: CLAIM OF EMPLOYEES: On November 29, 1957, the Carrier improperly dismissed Carman Helper A. J. Santora in violation of the provisions of the controlling agreement, and

That accordingly, Carrier be ordered to restore Mr. Santora to service with all rights unimpaired and be compensated for all wage loss sustained during the period he was restrained from working, while a junior employe worked starting on or about February 28, 1958.

EMPLOYEES STATEMENT OF FACTS: A. J. Santora, hereinafter referred to as the claimant, was employed by the C.R.R. Co. of N. J, hereinafter referred to as the carrier, as a carman helper at Elizabethport Freight Car Shops, Elizabeth, N. J.

On October 31, 1957, the claimant, a stockholder in the company, returned unsigned proxies with a letter stating he would cast his own vote at a stockholders meetings and to advise Mr. E. T. Moore, President, that he would not vote for him to retain his office and outlined the reasons therefor.

Subsequently, on or about November 8, 1957, there was a force reduction in Elizabethport Shops and the claimant was among those furloughed.

In a letter dated November 8, 1957 signed by Mr. J. C. McLester, General Counsel, Mr Santora was requested to appear in the general counsel's office to discuss this matter. In addition, Mr. McLester also attempted to explain the difference between the duties of an employe and a stockholder. This meeting was held November 14, 1957 and apparently did not come to any conclusions.

Two letters dated November 18, 1957 were mailed to claimant summoning him to attend a formal hearing and to substantiate the charges against Mr. E. T. Moore, President.

Claimant, in a letter dated November 20, 1957 advised he would not attend this hearing outlining his reasons accordingly therein.

ligations arising out of and incident to the relation, it is good ground for his discharge." p. 109.

In **OSBURN v. DE FORCE**, 257 Pac. 685, the Supreme Court of Oregon considered an action which was brought by an employe for unlawful discharge. It appears that the employe prior to his discharge had brought an action against his employers to enjoin them from interfering with the employe's management at an oil works. In the complaint in the employe's injunction proceeding it was alleged that the employers were incapable of adequately or efficiently attending to the affairs of the business details of the oil works. In holding that the discharge of the employe was proper the court, referring to the complaint in the injunction suit, stated:

"The making of this complaint and publishing it to the world as plaintiff did was calculated to injure defendant's business. Plaintiff was the employe of the defendants' intestate and his wife. The charges plaintiff made against them displayed a lack of fidelity to their business and disloyalty to them. Plaintiff had expressly contracted to do his utmost to build up his employers' business. Every contract of employment implies an engagement on the part of the employe to be faithful to his employers' interests and loyal to his employers. The charges made by plaintiff against his employers are the opposite of his implied contract with them." p. 689

The First Division of the National Railroad Adjustment Board in **Awaro 16849, Docket 30798**, likewise recognized that "disloyalty to the carrier" justified dismissal.

In view of these legal principles and the actions of Mr. Santora there can be no doubt that the action of the carrier in discharging Mr. Santora was justified and proper and that his conduct which caused his discharge was the result of his own voluntary election and action.

The carrier submits that its actions in terminating Mr. Santora's employe relationship were neither arbitrary, capricious or otherwise unreasonable.

The carrier respectfully requests your Honorable Board to deny this claim in its entirety.

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.

On November 27, 1957 Claimant Carman Helper was dismissed from the service of Carrier. His dismissal stemmed from a letter he had written to the secretary of the company on October 31 saying that he would make certain charges against Company President Moore at the annual stockholders meeting on December 2 seeming to involve matters of policy and business judgment. On November 8 claimant was furloughed. Following a personal conference with Mr. Moore and others Claimant was directed by letter to be present at a specified time and place on November 25 to substantiate his charges against President

Moore at a formal hearing, and he replied that he "must reject the proposed hearing" for rambling reasons stated at length. Carrier says that "Upon his failure to appear at the hearing it was determined that his employe relationship should be terminated because of disloyalty and insubordination."

X-1 Assuming, but not holding that claimant's conduct constituted disloyalty and insubordination, neither he nor his representative was apprised of any such charge, as required by Rule 37, nor was he given or offered a hearing on such charge, nor was he dismissed as result of such charge. The only hearing of which he had notice was a hearing to substantiate his charges against Mr. Moore, rather than to substantiate charges against him and the action terminating his employment, as he was advised in notice of dismissal, "is taken as result of your refusal to appear for hearing * * * relating to certain charges made in writing by you against the President of this Company."

The carrier violated the provisions of Rule 37.

AWARD

X-2 Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1960.