

Award No. 3580
Docket No. 3301
2-CNO&TP-SM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Sheet Metal Worker W. G. Seat was unjustly suspended on September 7, 1957, and discharged from the Carrier's service on September 11, 1957.

2. That accordingly the Carrier be ordered to restore to Sheet Metal Worker W. G. Seat his vacation rights unimpaired and compensate him for all time lost from September 7, 1957 to December 24, 1957, date of his restoration.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker W. G. Seat, hereinafter referred to as the claimant, was hired by The Cincinnati, New Orleans and Texas Pacific Railway Company, hereinafter referred to as the carrier, on September 2, 1949, at its Chattanooga, Tennessee shop. He was arbitrarily suspended on September 7, 1957, and was discharged on September 11, 1957. His regular assigned work days was Monday through Friday, hours 3:00 P. M. to 11:00 P. M., rest days Saturday and Sunday.

Claimant performed his usual duties of inspecting sanders on diesel-electric units 4205, 4324, 6163 and 6110 on the afternoon of September 6, 1957.

The above mentioned diesel units were dispatched from Chattanooga, Tennessee, north on train SR 54 on the afternoon of September 6, 1957, after claimant made inspection and worked sanders.

Claimant was called in the office of master mechanic on September 7, 1957, and informed that he was charged with having failed to open sand valve between Diesel Units 4324 and 6163 prior to their dispatch from Chattanooga, Tennessee, on train SR 54, September 6, 1957. Investigation was held by Master Mechanic O. H. Smart. Claimant was suspended. Copy of the transcript of the investigation is submitted herewith and identified as Exhibit A. In a letter addressed to the claimant dated September 11, 1957, Master Mechanic O. H. Smart, advised the claimant that on the basis of facts

CONCLUSION

The evidence here presented shows conclusively that:

- (1) Carrier's action was strictly in compliance with agreement rules.
- (2) Claimant was guilty as charged and he was dismissed for just and sufficient cause.
- (3) The principles of prior awards of all four divisions of the Adjustment Board support carrier's position.

The Board, having before it evidence proving that claimant was guilty as charged, and that the agreement was strictly complied with, cannot do what is here demanded by the association, and has no alternative but to make a denial award.

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.

Claimant was suspended on September 7, 1957 and discharged on September 11, 1957 on the ground of having been negligent in the performance of his assigned duties on September 6, 1957. On December 16, 1957 Carrier offered claimant reinstatement with seniority rights and pass privileges unimpaired, but without pay for time lost and vacation rights. Claimant returned to service as of December 24, 1957. In effect, therefore, claimant was suspended from September 7 to December 16, 1957.

We think the evidence is sufficient to support carrier's finding that claimant was negligent in performing his assigned duties on September 6, 1957, thereby being responsible for the fact that Train No. SR-54 stalled on a mountain near Oakdale, Tennessee, during the night of September 6-7. Claimant therefore became liable to discipline and we are not prepared to say that the period of suspension which was, in fact, imposed upon him was arbitrary, capricious or otherwise unreasonable. Having reduced the dismissal to a suspension, however, Carrier was not entitled to continue to withhold claimant's vacation rights, as if the dismissal had remained in effect.

AWARD

The claimant's service record shall show that he was under disciplinary suspension from September 7, 1957 to December 16, 1957. The claim is sustained with respect to restoration of his vacation rights. The claim for back pay is denied.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.