

Award No. 3779

Docket No. 3684

2-NP-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the investigation accorded Crew Lineman S. J. Landwehr on May 14, 1959 was not held in accordance with the provision of Rule 37(a) of the controlling agreement.

2. That the Carrier unjustly discharged Crew Lineman S. J. Landwehr from the service on May 26, 1959.

3. That accordingly the Carrier be ordered to reinstate Crew Lineman S. J. Landwehr to the service with seniority and vacation rights unimpaired and compensate him for all wages lost as a result of the aforesaid unjust dismissal.

EMPLOYEES' STATEMENT OF FACTS: Crew Lineman S. J. Landwehr, hereinafter referred to as the claimant, was employed by the Northern Pacific Railway Co., hereinafter referred to as the carrier, on May 6, 1948 as groundman and promoted to crew lineman on July 18, 1956, which position he held until dismissal from the service of the carrier on May 26, 1959.

Claimant was temporarily removed from his assignment of crew lineman with outfit cars as headquarters during the period January 19 to 31, 1959 and assigned to fill position of communication lineman at Auburn, Washington, while the regular incumbent was on vacation.

Claimant was again temporarily removed from his regular assignment as crew lineman with outfit cars as headquarters on February 5, 1959 and assigned to fill position of communication lineman with headquarters at Auburn, Washington, account regular incumbent off sick. Claimant worked the position of communication lineman through March 6, 1959 at which time he reverted back to his regular assignment as crew lineman.

Claimant while assigned to temporarily fill the position of communication lineman at Auburn, Washington was entitled to expenses in accordance with the provisions of Rule 12 captioned "Filling Temporary Vacancies" and reading in pertinent part:

Management has knowledge of the occurrence to be investigated". The carrier submits that the investigation conducted on May 14, 1959 not only complied with the specific provisions of Rule 37(a) but was also in full compliance with the intent of that rule, namely, that a timely investigation was held. The date when the investigation was held was not prejudicial to Mr. Landwehr.

If in spite of the evidence and admissions of Mr. Landwehr, this Division should find that Mr. Landwehr was unjustly dismissed from the service of the Railway Company, the compensation for wage loss is the difference between the amount Mr. Landwehr would have received had he remained in the service of the Railway Company and the amount earned by this employee in outside employment subsequent to his discharge. Rule 37(d) of the communications department agreement effective November 1, 1954 reads:

"(d) If the charge against the employee is not sustained, his record shall be cleared and he shall be returned to his former position with seniority rights unimpaired and compensated for all time lost less what he may have earned in other employment."

The carrier vigorously asserts that the charges preferred against Mr. Landwehr were sustained not only by the evidence introduced at the investigation conducted on May 14, 1959 but by Mr. Landwehr's own admission. In consequence thereof, Mr. Landwehr is not entitled to reinstatement under any conditions.

The carrier has shown that Mr. Landwehr falsified his work reports and expense accounts on certain dates in January, February and March, 1959. The discipline administered to Mr. Landwehr measured up to this man's dereliction. Rule 37 of the communications department agreement effective November 1, 1954 was complied with in meting out the discipline to Mr. Landwehr. This Board in numerous awards has consistently adhered to the principle that it will not interfere in disciplinary matters unless the carrier's action was arbitrary and the employee failed to secure a fair and impartial investigation. The record in this docket makes it abundantly clear that Mr. Landwehr was accorded a fair and impartial investigation, that the rules of the applicable agreement were complied with prior to the assessment of discipline, that the evidence sustained the charges and that the discipline administered was rendered in good faith and was not tainted with bias. Consequently, this Division should not superimpose its judgment upon that of management and order the reinstatement of Mr. Landwehr. The claim covered by this docket should be denied 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 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.

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

Claimant was entitled to reimbursement for expenses incurred for meals and lodging while he was away from headquarters. He was notified to appear for investigation on charge of falsifying his reports and expense accounts for certain dates in January and February and March 1, 1959, and it appears from

the record of the investigation that on those dates he spent the night at his home, some ten miles away, and reported his usual expense for hotel lodging.

While claimant, as urged in his behalf, may have rationalized his conduct as not falsification or fraudulent, the claim cannot be sustained on that ground.

The employees rely further on Rule 37 of the agreement, which requires that claimant should not be disciplined or dismissed without an impartial hearing which shall be held within fifteen calendar days after the date of the occurrence to be investigated, or within fifteen calendar days after the date the Management has knowledge of the occurrence to be investigated. The rule further provides that if the hearing is not held within the time limits therein specified, the charges against the employee shall be considered as having been dismissed.

Claimant was notified to appear for investigation on April 29, 1959, and carrier asserts that notice was timely because it did not have knowledge of the occurrence until April 14 when it received the report of the officer sent to investigate the facts. It appears that upon receipt of claimant's report and expense account for February, at some time before March 17, carrier in making payment to claimant eliminated the charges for lodging on those dates when later he was charged with staying at home and on March 17 claimant made written complaint because of the deduction.

Carrier states that these charges were eliminated because "carrier had reason to believe that Mr. Landwehr falsified his expense account", but it insists that the elimination of those dates did not impute actual knowledge of the falsification of the expense account. The word "knowledge" is not one of single and precise meaning. The patent purpose of the rule was to ensure prompt hearing of charges but to protect carrier in case of unknown occurrences. Absolute proof, if ever possible, certainly was not contemplated. Carrier has failed to state the nature or extent of the knowledge which it obtained more than 40 days before it set the date of the hearing. It was knowledge sufficient not only to arouse suspicion but to constitute reason to believe that claimant had falsified his expense account and to eliminate the certain days involved in making payment to claimant. We think that showed sufficient knowledge of the occurrence to be investigated to require hearing within fifteen days thereafter under the rule. Such being the case the charges against the employee must be considered as having been dismissed, as required by Rule 37.

It appears from claimant's notice of dismissal that he was dismissed not alone because of facts investigated but, as stated, "further in view of the fact that you served a sixty days suspension * * * on a similar charge and substantiation thereof, you are hereby dismissed * * *". In fact, as later admitted, claimant had not been suspended on a similar charge nor had such charge been substantiated. That was not proper ground for dismissal.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1961.