Award No. 4021
Docket No. 3982
2-CofG-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the Controlling Agreement on April 15, 1960, when it held Roadway Mechanic (Machinist) E. W. Dixon out of service pending investigation.

2. That the Carrier unjustly dismissed E. W. Dixon on May 4, 1960 following investigation held on April 22, 1960.

3. That accordingly he is entitled to be compensated for all time lost between April 16, 1960 and the time he was restored to service on September 19, 1960.

EMPLOYES' STATEMENT OF FACTS: Machinist E. W. Dixon, hereinafter referred to as the claimant, was originally employed by the Central of Georgia Railway Company, hereinafter referred to as the carrier, at Savannah, Georgia, as a machinist with a seniority date of January 6, 1955, however, he was subsequently furloughed at Savannah, Georgia, on November 15, 1958, due to the fact that the water front docks and etc., where he worked, were sold by the carrier and there were no junior employes at that point which he could displace. He was then employed as a machinist in the carrier's shop at Macon, Georgia, and worked for some 3 months on locomotive repair work and then bid on and was assigned to a travelling roadway mechanic's job with headquarters at Macon, Georgia, which position he held until he bid on and was assigned to an additional roadway mechanic's position at Columbus, Georgia establishing a seniority date of 11/23/59 at Columbus, Georgia. The claimant is a monthly-rated employe with a salary at that time of $579.22, per month, which covered all services rendered Monday through Saturday of each week, as per rule 15 of the current agreement.

abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

In **Second Division Award No. 1109**, Referee Sidney St. F. Thaxter, your Board held in part:

"This Board is loathe to interfere in cases of discipline if there is any reasonable grounds upon which it can be justified."

SUMMARY

The facts of record speak for themselves. Summarizing, they are:

(1) The charges were properly made; a fair and impartial investigation held; and claimant notified of the decision rendered, in strict keeping with the rules of the effective Shop Craft's Agreement and normal procedure on this property.

(2) The testimony of the claimant, Mr. Dixon, as well as others appearing at the investigation, shows conclusively that the charges were substantially sustained.

(3) In assessing the discipline (dismissal), the carrier also took into consideration the personal record of claimant, which speaks for itself. It is carrier's hope that the lost time will cause Mr. Dixon to realize the error of his ways, and become a loyal and faithful employe in every way.

It is clear then that the action of the carrier is entirely in order, and that the claim has no merit whatsoever. Carrier strongly urges the Board to render 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.

On April 15, 1960, Claimant was given notice of suspension and of investigation on April 22 on a charge of "being under the influence of alcohol or narcotics while under pay and on duty, April 9, 1960". After a hearing he was dismissed, but was restored to service on a leniency basis on September 19, 1960. The claim is that he was unjustly suspended and dismissed and should be compensated for all time lost.

Claimant was a monthly rated employe paid for six eight-hour days per week, with Sunday as his rest day, and without pay for overtime.

The following week had been assigned him as a vacation period. April 9 was the preceding Saturday; he had started work at 7:30 A. M. and his regular eight hours would have expired at 3:30 P. M. if he had worked

through without lunch, or 4:00 if he had stopped for lunch. However the Superintendent of Road Equipment had given his permission to leave whenever his work was finished. He left about 11:45, and at 3:10 P. M. was arrested about eighty miles away on charges of speeding and of driving while under the influence of intoxicants or narcotics.

There is a dispute whether Claimant had finished his work so as to be entitled to leave before 3:30 or 4:00 P. M. But that is not material, for he was not charged with absenting himself from duty. (The charge was of being under the influence of alcohol or narcotics while under pay and on duty.) As a monthly paid employe he was under pay. But he was not then on duty.

Furthermore, there is no evidence in the record that he was under the influence of intoxicants or narcotics. The evidence shows that his plea was "nolo contendere", which under the law of Georgia (Title 27, Section 1410) "shall not be used against the defendant in any other court or proceedings as an admission of guilt, or otherwise, or for any purpose * * *". The words mean "I do not wish to contest", and the plea has long been used to dispose of charges, usually minor, without expensive or burdensome litigation on the one hand, or admission of guilt on the other.

There is testimony that Claimant telephoned the superintendent that he had been "arrested for drunken driving and speeding"; but that is no more an admission of the charge than would be a statement that one was arrested for murder or treason. Claimant denied the charge except for speeding and improper license, and the record contains absolutely no evidence to sustain the charge on which he was investigated.

(The suspension pending the hearing was improper under Rule 35, which authorizes suspension only "in proper cases (the proper case is one where leaving the man in service pending an investigation would endanger the employe or his fellow employes or company interest) * * *".) 1

The claim is sustained in full and Claimant is entitled to be compensated for all time lost between April 16 and September 19, 1960, with deductions for outside earnings, if any. 2

AWARD

Claim sustained to the extent stated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.