

Award No. 4228
Docket No. 3940
2-MP-CM-'63

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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Car Inspector Carl Grasso was unjustly dismissed from the service of the Missouri Pacific Railroad Company on July 18, 1960, for allegedly failing to protect himself with blue flag protection on June 15, 1960.

2. That accordingly, the Missouri Pacific Railroad Company reinstate Car Inspector Grasso with seniority and vacation rights unimpaired and pay for all time lost from his assignment on the basis of what he would have earned had he not been dismissed from service on July 18, 1960.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Carl Grasso, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Omaha, Nebraska. The claimant has been an employee of the carrier for approximately 23 years and on June 16, 1960, he received letter from master mechanic, Mr. E. E. Dent, to report to the office of the general car foreman at 10:00 A. M., June 21st, 1960, for formal investigation to develop the facts and place responsibility for alleged failure to properly protect himself with blue flag protection while performing duties as car inspector on Grace Street Track No. 8 at approximately 10:25 A. M., June 15, 1960.

In line with the master mechanic's instructions, the claimant, with his representatives, reported to the general car foreman's office at the designated time to stand investigation as outlined above.

Mr. J. M. Pulliam, vice-general chairman, took exception to the interrogating officer, Mr. E. E. Dent, questioning the accused ahead of carrier

that the only switch engine working was in another yard and, in the other case, that the claimant was discriminated against because of his activities in the Brotherhood Railway Carmen of America. The claimants asked for leniency and were reinstated prior to initiating their claim for time lost. Contrast their attitude with that of the claimant in this dispute who has refused to admit any wrongdoing. Claimant's attitude has not changed. He has sued the general car foreman in a civil suit. There is no reason for extending leniency to the claimant. The discipline assessed was not harsh, arbitrary or capricious. Under the well established principles of your Board, there is no reason for your Board disturbing the action taken by the carrier.

But is it not necessary for your Board to consider these questions. The matter must be considered closed because the decision of the superintendent was not timely rejected nor was his decision timely appealed as required by Rule 31 (b). Although the claim must be denied for failure to comply with the time limit rule, we have nevertheless gone on to show that claimant was given a fair and impartial investigation before administering discipline as required by Rule 32. Substantial evidence was adduced at the investigation to prove that claimant violated safety instructions as charged. We have also shown that your Board in Awards 107 and 118 has refused to disturb the action of this carrier in administering discipline under identical circumstances. Claimant in failing to comply with the carrier's instructions also failed to fulfill his obligation under Rule 43 of the shop craft agreement, reading

"PROTECTION OF EMPLOYEES:

RULE 43. (a) Employes will carefully observe the rules of the Company, designed to avoid accident and personal injuries."
This claim must be denied.

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.

The record contains evidence sufficient to sustain the charge, and this Division is not in position to weigh the evidence and determine whether its weight might have justified a different conclusion.

We find that the objections raised under the time limit rule were waived or condoned by the manner in which the claim was handled on the property, and that the manner of conducting the hearing was not unfair nor prejudicial to claimant's rights.

The record indicates some laxity in observance of blue flag protection, and a rather abrupt change in policy which made claimant's discharge an excessive, arbitrary and capricious penalty. Award 2623, 2653 and 2851. Under the circumstances we consider the penalty excessive to the extent exceeding claimant's suspension beyond the time needed to make this award effective.

AWARD

Claim sustained to the extent that the dismissal constituted an excessive penalty and that claimant be restored to duty with all rights unimpaired, but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.