

Award No. 4293
Docket No. 4074
2-NPTCO-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

THE NORTHERN PACIFIC TERMINAL COMPANY
OF OREGON

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement, the Carrier improperly and unjustly held Machinist G. W. Smith out of service from November 27, 1960 to December 12, 1960.

2. That accordingly the Carrier be ordered to compensate the aforesaid employe for all time lost during the aforesaid period.

EMPLOYES' STATEMENT OF FACTS: Machinist G. W. Smith, hereinafter referred to as the claimant, is regularly employed by the carrier at Portland, Oregon, the Northern Pacific Terminal Company of Oregon, hereinafter referred to as the carrier.

On or about 1:00 A.M., on October 26, 1960, the carrier's supervisor ordered the claimant to blow off Engine No. 40 during a heavy rainstorm. Claimant Smith, being ill, requested Supervisor Roberts to place the engine in the roundhouse where he would perform the work in question. This the supervisor refused to do and suspended the claimant from service.

Subsequent to the claimant's suspension, he received notice from the carrier reading:

"Dear Sir:

"You are hereby notified to appear in the office of the Master Mechanic, Roundhouse, Guilds Lake, Portland, Oregon at 9:30 A.M. Wednesday, November 2, 1960 for formal hearing.

"You are being charged with the following, which allegedly occurred on time card date of October 25, 1960, (actual date of October 26, 1960) at/or about 1:00 A.M.:

Carrier rules violated by such conduct are as follows:

Third General Notice: "To enter or remain in the service is an assurance of willingness to obey the rules."

Rule 700: "Employees who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subjected to criticism and loss of good will, will not be retained in the service."

First paragraph of Rule 701: "Courteous, gentlemanly deportment is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Employees must not enter into altercation with any person, no matter what provocation may be given. Report of violation of this rule must be made in writing to their supervising officer."

First paragraph of Rule 702: "Employees must attend to their duties during the hours prescribed, reside where required, and comply with instructions from the proper authority. They must not absent themselves from duty, exchange duties with or substitute others in their place, nor engage in other business without proper authority."

Accordingly, discipline of actual suspension of only 15 working days imposed on claimant was reasonably related to the seriousness of his offenses.

CONCLUSION: In view of the above, the claim is clearly without merit, therefore, it should be denied in its entirety, and the carrier so requests.

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 waived right of appearance at hearing thereon.

Claimant, a Machinist employed by the Carrier at Portland, Oregon, alleges that he was improperly and unjustly held out of service from November 27, 1960 to December 12, 1960.

It appears that about 1:00 A.M. on the morning of October 26, 1960, Claimant was ordered to blow off an engine by his Supervisor, prior to the engine being taken into the Round House for inspection. It was raining; Claimant states that he was ill; that he remonstrated with the supervisor either to place the engine in the Round House, or to wait until the rain abated. An altercation ensued, and the supervisor sent Claimant home under suspension.

A hearing was held, the transcript of which is before us and has been reviewed by us. Claimant was given a 15 day suspension following the hearing and was returned to work on December 12, 1960.

The question to be determined is whether or not the Claimant was unjustly suspended from the service as shown by the record before us, including the transcript of the hearing.

The transcript shows factual variances in what occurred on the morning in question. These were resolved by the officer conducting the hearing. In the absence of a lack of substantial evidence to support such factual findings, we cannot disturb such findings.

There remains the resolution of whether the consequent sanction imposed by the Carrier was unreasonable or arbitrary, for in the absence of such, numerous awards of this and other Divisions hold that we may not substitute our judgment for that of the Carrier in this type of case.

Claimant cites the "Inclement weather" rule (Rule 48) as sustaining his contention that the engine should have been taken into the Round House to be blown off. This rule reads in part as follows:

"Rule 48. Employees will not be required to work on engines or cars outside of shops during inclement weather, if shop room or pits are available. * * *."

Carrier contends that the Round House was not available and could never be available to blow off an engine because of the condition that would be created therein. We must agree with this contention.

While the Claimant's original request of his supervisor might to us seem reasonable, nevertheless the dispute that ensued could have been resolved or avoided by Claimant's compliance with what he considered a grievous order, and thereafter pursuing the remedy allowed him under Rule 35 of the controlling agreement.

We decline to disturb the judgment of the Carrier and must deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1963.