

Award No. 4352

Docket No. 4222

2-C&NW-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Chicago and North Western Railway Company unjustly dismissed mechanic-in-charge L. Beaster of North Fond du Lac, Wisconsin, on April 17, 1961.

2. That accordingly, the Chicago and North Western Railway Company be ordered to reinstate this employe with seniority rights unimpaired and compensate him for all earnings and rights he has been deprived of, retroactive to April 17, 1961.

EMPLOYEES' STATEMENT OF FACTS: The Chicago and North Western Railway Company, hereinafter referred to as the carrier, employed Mr. L. Beaster, hereinafter referred to as the claimant, at North Fond du Lac, Wisconsin, during November, 1945 to February, 1948, transferred to Chicago Shops, February 17, 1948, transferred to Milwaukee, Wisconsin, May 2, 1949, then transferred to North Fond du Lac, Kaukana, then back to North Fond du Lac, until dismissed from service April 17, 1961.

Under date of April 6, 1961, claimant was notified by carrier's Master Mechanic H. R. Spencer to arrange for investigation.

The investigation was held as scheduled and copy of hearing transcript furnished employes by the carrier.

In "Discipline Notice" dated April 17, 1961, directed to the claimant by carrier's Master Mechanic H. R. Spencer, the claimant was advised that he was dismissed.

Protest was made that carrier refused to grant additional representation and failed to include in the investigation record the request made and its denial. Letters dated May 31, June 3, June 20, June 21, August 15, 1961 and February 6, 1962, confirm the protest.

In this connection, attention is called to the fact that at the bottom of page 3 the instructions in effect relative to reports which must be made showing flanges exceeding $1\frac{7}{8}$ " are quoted. Claimant admitted he failed to comply with these instructions. At this time the carrier wishes to point out that in the testimony of claimant in this case he testified that engine 1014 arrived at North Fond du Lac with a carborundum brake shoe in the cab unit to apply to No. 2 wheel, and that this was applied about two days later. Information available to the carrier indicates that Mr. Beaster never applied a carborundum brake shoe to any wheel of this engine during the time it was at North Fond du Lac.

In the circumstances, the carrier submits that the discipline assessed was entirely justified, since claimant's responsibility for the incident for which investigated was definitely and conclusively established from his own testimony.

The carrier submits the claim in this case 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 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 Claimant was charged, given a hearing, found guilty and dismissed from service for permitting a diesel locomotive under his supervision to operate when it did not meet I. C. C. requirements on account of a defective left No. 2 wheel flange. It is charged that the Claimant was not given a fair hearing because he was denied proper representation; the evidence produced at the hearing was insufficient to establish the charge; testimony favorable to the Claimant was deleted from the transcript; the transcript was not signed by the Claimant or his representative, but was signed by parties who were not present at the hearing; that the transcript should have been typed at the time of the investigation, so that it could have been checked for accuracy before the hearing was concluded; and that the Claimant did not state at the investigation that he "did violate a rule", as is shown by the last page of the transcript.

The record affirmatively discloses that the Claimant was present and participated in the investigation, and that he was represented by his Local Chairman at his request.

We have carefully read the record and find that it contains evidence of probative value sufficient to sustain the charge. The Claimant only produced one witness, a Mr. Morris Hills, and this witness was asked but one question, to-wit: "Do you figure that what Mr. Beaster, (the claimant) has said is true to the best of your knowledge?", to which the witness replied, "Yes, sir". There is no showing what evidence, if any, was deleted from the transcript, and the point that it was not signed by the claimant or his representative but that it was signed by two persons who were not present at the investigation are trivial circumstances. Surely, an employe who is on trial should not be permitted to invalidate the proceeding by refusing to sign the transcript,

and attention is called to the fact that the two strangers whose names appear on the transcript merely witnessed the signature of the clerk who reported the proceedings.

The contention that the Claimant should have furnished a complete transcript of the investigation before it was concluded is unique, impractical and is not supported by any rule or past practice of which we have any knowledge.

The Claimant's contention that he did not say at the investigation that he had violated a rule was brought into the record in the Employee's Rebuttal Submission, after the Carrier had filed its submission and was foreclosed from submitting additional evidence.

We are not unmindful that the Claimant established an unblemished record of sixteen years previous service. However, this gave him no right to be merely demoted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1963.