

Award No. 4461
Docket No. 4290
2-CRI&P-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Firemen & Oilers)

CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Laborer Jose M. Sandoval was unjustly dismissed from the service of the Carrier on July 19, 1961.
2. That accordingly the Carrier be ordered to reinstate this employee with all of his seniority and service rights intact and pay for all time lost effective with July 19, 1961.

EMPLOYEES' STATEMENT OF FACTS: Jose M. Sandoval, hereinafter referred to as the claimant, entered the service of the carrier on May 8, 1958, remaining therein until July 19, 1961, the effective date of his dismissal.

Under date of June 28, 1961, the claimant received the following notice:

"June 28, 1961

"Mr. Jose M. Sandoval
124 2nd Street
Silvis, Illinois

"You are hereby notified that a formal investigation will be held in the office of the Assistant Master Mechanic at Silvis, Illinois, at 9:30 A.M., Monday, July 3, 1961, to develop the facts, discover the cause and determine your responsibility, if any, in connection with you absenting yourself from duty without permission on June 13, 1961 in violation of Rule Q of Form G-147 revised, and for falsifying the reason for your absence on that date, in violation of Rule N of Form G-147 revised.

"Please arrange to be present with your representative, if representation is desired, as provided in the Firemen, Oilers and Shop Laborers Agreement."

time lost has no merit in view of the facts, nor does it have rule support under the agreement.

The claim should 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 waived right of appearance at hearing thereon.

Claimant was a Laborer at Carrier's Silvis, Illinois Diesel Pit, and after notice and hearing was dismissed from service on July 19, 1961.

The transcript of the hearing is a part of our file and has been examined by us.

The Organization first cites Rule 14 of the controlling agreement and complains that the hearing was not held "promptly". We call attention to the fact that that part of the rule calling for prompt hearing refers to a hearing following suspension. Such was not the case here, and this contention falls as not applicable.

A brief review of the facts developed at the hearing shows that Claimant spoke little English. His shift on the day in question was 11:00 P.M. to 7:00 A.M.

About 5:00 P.M., six hours before he was to report, he called a fellow employe and asked that he call the Pit and advise that he (Claimant) was sick. The fellow employe did not call until about 11:00 P.M. The call was taken by an Electrician and relayed to the Foreman. Claimant testified that he used this manner of reporting off because of his language difficulty.

About 1:15 the next morning, Claimant was arrested for driving under the influence of intoxicating liquor. He was subsequently convicted of the charge.

The notice of dismissal cites a violation of Rules Q and N of Carrier's Form G-147 which are set out on page 2 of the Carrier's submission.

Carrier objects to our consideration of Ex. "1" attached to the Employes' rebuttal. We sustain the objection and have not considered it in our disposition of this dispute, since it obviously was not considered or offered in the processing of this dispute on the property.

Either under Rule 20 of the controlling agreement or under Carrier's Rule Q, we hold with the Carrier that Claimant did not take proper measures to notify his foreman or receive proper authority to be absent.

However, we cannot agree that this record supports a violation of Rule N, namely, that Claimant was dishonest in stating that he was sick. Carrier

in fact admits on page 6 of its submission that this is conjecture, and so it is. True, he was arrested two and one-quarter hours after he was scheduled to start work, but the uncontradicted testimony in the transcript is that he was sick at 5:00 P.M. Conjecture or speculation cannot support the penalty visited upon Claimant here, and we find that the penalty imposed was unreasonable.

AWARD

Claim 1: Sustained.

Claim 2: Claimant to be restored to service without loss of seniority or service rights, 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 28th day of February, 1964.