

Award No. 4639
Docket No. 4578
2-NYC&StL-EW-'65

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'
Department, A. F. of L.-C. I. O. (Electrical Workers)

THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That Electrical Worker C. C. Evans was unjustly dealt with and the provisions of the agreement violated when he was permanently dismissed from the service of the Carrier, effective 5:00 P. M., April 13, 1962.

2. That accordingly the Carrier be ordered to compensate Mr. C. C. Evans for all time lost as a result of its unjust action.

3. That the Carrier be ordered to restore Mr. Evans to service with seniority, vacation and other rights unimpaired.

4. That the time lost by Mr. C. C. Evans as a result of his unjust dismissal, be credited as days worked by Mr. Evans for the purpose of computing qualifying time for vacations, insurance, etc.

EMPLOYEES' STATEMENT OF FACTS: 1. Mr. C. C. Evans was employed by the carrier in the communications department with seniority date of February 24, 1947.

2. Mr. C. C. Evans was, prior to April 13, 1962, regularly assigned as a section lineman with headquarters at Adena, Ohio.

3. Mr. Evans was called to clear wire trouble on Saturday, February 24, 1962 and left his headquarters at 7:30 A. M., on that date.

4. Mr. Evans was returning to his headquarters at approximately 12:01 A. M., Sunday, February 25, 1962 when the company vehicle he was driving left the road, struck a telephone pole and a farmer's fence.

5. The Ohio State Highway Police investigated the accident involving the company vehicle Mr. Evans was driving. As a result of this investigation, Mr. Evans was charged with "driving left of center."

6. Mr. Evans appeared in county court on Thursday, March 1, 1962 to answer the charge stated above. The county court fined Mr. Evans Five Dollars (\$5.00) and costs. The fine and costs were both suspended by the court.

7. Mr. Evans was directed to be present at a hearing to be held in the superintendent's office building, Brewster, Ohio at 9:00 A. M., March 21, 1962, in connection with the above accident. This hearing was postponed until March 28, 1962.

8. Hearing was held on March 28, 1962.

9. On April 12, 1962 the carrier's hearing officer directed a letter to Mr. Evans in which he was permanently dismissed from the service of the railroad, effective at 5:00 P. M., April 13, 1962.

10. This dispute has been handled with all officers of the carrier designated to handle such disputes, all of whom have declined to make satisfactory adjustment.

11. The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYEES: Rule 18 of the current agreement is among those involved in this dispute and for your ready reference is quoted as follows:

"Rule 18

DISCIPLINE

No employe shall be disciplined without a fair hearing by a designated officer of the carrier. Suspension in special cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing such employe and the duly authorized committeeman or his accredited representative, shall be apprised of the precise charge and given reasonable opportunity to assure the presence of necessary witnesses. If it is found that the employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and compensated for his net wage loss, if any, resulting from said suspension or dismissal.

Note

Neither Rules 16 or 17 attempts to obligate the carrier to refuse permission to an individual employe to present his own grievance or, in hearing involving charge against him, to present his own case personally. The effect of these rules, when an individual employe presents his own grievance of case personally is to require that the duly authorized committee or its accredited representative, be permitted to be a party to all conferences, hearing or negotiations between the aggrieved or accused employe and the representatives of the carrier."

Rule 18 provides among other things, that:

"No employe shall be disciplined without a fair hearing. The employe and his duly authorized committeeman shall be apprised of the precise charge prior to the hearing. If the employe has been unjustly

the investigation, who know the men and are therefore better able to appraise their motives and prejudices."

It having been established that the claimant demonstrated extreme carelessness, the hearing officer took into consideration the claimant's past record in fixing the amount of discipline. As was pointed out to the committee, the claimant had a history of carelessness. In 1952 he was suspended for five days for carelessness in handling a track car in his charge resulting in its being struck by a freight train. In 1957 a truck being operated by him in the same general area of the instant case rolled over in the ditch causing some \$300 damage. His explanation of the cause of that accident was that a dog ran in front of him causing him to swerve his truck onto the shoulder of the road and lose control. No evidence was obtainable that would cast any doubt on the claimant's story and he was therefore not assessed any discipline.

Aside from the actual accidents the claimant was involved in, he was also talked to on several occasions regarding his unsafe driving habits. Reports had been received that he was taking unnecessary chances while driving his truck and also that he drove both his truck and his track car at higher than safe speeds.

The carrier has shown that the claimant was guilty of extreme carelessness in the handling of a vehicle in his charge. The discipline assessed for a previous act of carelessness plus the numerous warnings he received had not induced him to improve his habits. In view of the fact that the duties of a section lineman, of necessity, entail the operation of track and highway vehicles, the Carrier could not continue him in service and risk the probability of an accident having even more serious consequences. His dismissal was not arbitrary or an abuse of carrier discretion.

The claim made in his behalf is therefore without merit and should be denied. This board is asked to so rule.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The evidence adduced at the hearing afforded the Carrier's hearing officer a reasonable basis for rejecting the claimant's story as to the cause of the accident and for finding him responsible therefor.

The contention of the Employees that the notice of hearing did not contain a specific charge was not raised at the hearing nor in the handling of this claim on the property, so it cannot be considered here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.