

Award No. 4649

Docket No. 4651

2-AT&SF-MA-'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. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
— WESTERN LINES —**

DISPUTE: CLAIM OF EMPLOYEES: 1. That Karl E. Wilson, Machinist, Albuquerque, New Mexico was unjustifiably discharged from service of the AT&SF Railway Company on January 31, 1963 as result of formal investigation conducted January 18, 1963, account alleged insubordination.

2. That accordingly the Carrier be ordered to restore Karl E. Wilson to its service with all seniority, service rights, made whole for all contractual "fringe benefit" losses, and properly compensated for all wage loss retroactive to date of dismissal from service.

EMPLOYEES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, maintains a large mechanical department shop at Albuquerque, New Mexico and employs a sizeable force of machinists, which included Karl E. Wilson, hereinafter referred to as the claimant, to perform among other things, the inspection, maintenance, repair and overhaul of diesel locomotives.

Claimant's service with the carrier as evidenced by transcript of formal investigation follows: Employed in 1934 as track laborer at Dodge City, Kansas. Upon completion of high school in 1935, was employed as laborer in the car department at Dodge City. Subsequently employed as laborer in the roundhouse thereat, afterwards resigning to enroll at the Dodge City Junior College. Was indentured as machinist apprentice at Albuquerque in 1937 and continued in that capacity until completion of his apprenticeship in 1941.

Was promoted in January, 1942 to diesel maintainer (classification later changed to assistant supervisor of diesel engines) and transferred to Winslow, Arizona. He was subsequently transferred as such to Kansas City, then back to Winslow in the same capacity. Claimant was afterwards assigned as machinist at Winslow, lead track supervisor thereat, machinist at Albuquerque, later being promoted to an apprentice instructor and transferred to Amarillo, Texas, which position he occupied for a period of approximately four years whereupon

is limited. The Board will not disturb the action taken by management unless the record clearly shows that the action taken was arbitrary or in bad faith. From the evidence appearing in the record we cannot say that management acted in bad faith or arbitrarily."

Also please see Fourth Division Awards Nos. 264, 337, 622, 671, 935 and 1050.

In conclusion, carrier asserts that:

1. The claimant in the instant case deliberately and willfully refused to obey specific instructions issued by his supervisor and the seriousness of the offense justified dismissal from the carrier's service;
2. That the claimant was proven guilty of the charges of insubordination made against him on the basis of the evidence adduced at the hearing; and
3. That the claimant's employment record with the carrier proves beyond a reasonable doubt that he is a person who cannot reconcile himself to supervision in any form.

The carrier submits, therefore, that since the board may not substitute its judgment for that of the carrier in discipline matters, except when the carrier's action may be deemed to be arbitrary, capricious, etc., the facts of the instant dispute require a finding that the action of this carrier was neither arbitrary nor in bad faith, but entirely justifiable under the circumstances; therefore, carrier respectfully requests that its action be not disturbed and that the claim be dismissed or denied in its entirety.

* * * *

Without prejudice to the position of the carrier that it was justified in dismissing the claimant for reasons which are stated hereinabove, carrier desires to further state that if this claim is sustained, and the carrier emphatically asserts that the employees' claim does not merit such a decision, any allowance for wage loss (Item 2 of claim) should be less amounts earned in other employment, pursuant the provisions of Rule 33½, paragraph (d), of the current shop crafts' agreement reading:

"(d) If the final decision shall be that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal." (Emphasis ours.)

Attention is also directed to Second Division Awards 2811, 2653 and 1638; Third Division Awards 6074 and 6362; and Fourth Division Award 637.

Furthermore, attention is directed to the part of item 2 of the employees' claim, that the claimant be "made whole for all contractual 'fringe benefit' losses." In addition to the fact that such alleged losses are not identified, the above quoted portion of the claim is not supported by the provisions of Rule 33½, nor any other rule of the agreement, and is improper.

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.

It appears that for some months prior to the dismissal of the claimant the Carrier was aware of a course of conduct by him which, if pursued or persisted in, would inevitably lead to his dismissal. The Carrier did not, however, exercise its disciplinary powers or responsibilities to warn him of such result or to impose some lesser corrective disciplinary suspension. Considering his long service with this Carrier, dismissal without such a warning or lesser discipline under those circumstances is an unreasonable exercise of the Carrier's responsibility.

However there is another side to the coin. Surely the claimant was aware of his responsibility to obey directions of his supervisors which did not involve any immediate jeopardy to him and, if he considered such directions improper, to do as directed and file a grievance. The claimant elected to take the law into his own hands and refused to obey the supervisor's directions. Accordingly, it is not possible to sustain any claim for compensation and the reinstatement awarded should be considered as tantamount to a warning that persistence in similar conduct will result in just cause for discharge.

AWARD

Karl E. Wilson shall be reinstated to his former status as an employe with seniority unimpaired, without pay or other monetary benefit for the time lost since his dismissal, such time to be treated as a disciplinary suspension.

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.