

Award No. 4650

Docket No. 4613

2-TC-FO-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Firemen & Oilers)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current and controlling Agreement Laborer Ellis Wade, who has a seniority dating from October 24, 1924, was unjustly suspended from the service effective February 25, 1963, at Nashville, Tennessee, with resulting loss of wages.

2. That accordingly he is entitled to be paid for each day held out of service from February 25, 1963 to and including March 26, 1963.

EMPLOYEES' STATEMENT OF FACTS: Laborer Ellis Wade, hereinafter referred to as the claimant, was employed by the carrier as such on October 14, 1924.

On February 25, 1963 Roundhouse Foreman, Mr. L. Siner, advised the claimant he was suspending him from the service for a thirty (30) day period. Local Chairman John L. Ellis, upon learning of Mr. Siner's arbitrary action, asked Mr. Siner to grant the claimant an investigation, as provided for in Rule 18. The claimant was not granted an investigation.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement, effective January 1, 1944, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that this claimant, with thirty-eight (38) years, four (4) months and eleven (11) days seniority, when suspended was disciplined without due process afforded by Rule 18, reading in part as per following:

"(a) An employe who has established seniority under these rules will not be discharged or disciplined without just cause. If written request for hearing is made by such employe to the officer in charge within ten (10) days after date of discharge or discipline, it will be granted. If he request it, he will be informed, in writing, of the cause of the action. He shall have reasonable opportunity to secure the presence of necessary witnesses and may be represented by the duly authorized committee of employes, or fellow-employees of his choosing.

have done so for Wade if investigation were desired, unless it was because of his apparent firm conclusion that Rule 18 did not have to be followed.

It will also be observed that the claim that Wade could not write was first brought into the record and to carrier's attention by the general chairman in his letter of March 26, 1963, which letter was received after claimant had been returned to service.

The supervisor of wages informed the general chairman in his letter of May 30, 1963 that carrier was unable to agree that Wade's inability to write was responsible for his failure to request an investigation in conformity with the governing rule, submits that in the light of the circumstances its determination in this respect is soundly based, and that it cannot, contractually or otherwise, properly be overruled.

As to employees' contention (2) that there is no rule "providing for suspension or discipline such as is being applied in this case * * ", carrier also respectfully refers your board, as it did employees, to Rule 18 of the governing agreement. It is captioned "Discipline" and the first sentence thereof reads: "An employee * * will not be discharged or disciplined without just cause." (Emphasis ours). Provision is, therefore, made in the rule for either discharging or otherwise disciplining an employee. The word "disciplined" is bound to have meaning, and inasmuch as it is there used without modification or limitation of any kind, carrier submits that it obviously encompasses an assessment thereof of a lesser degree than discharge, such as the 30 days' suspension assessed in this case. Carrier got the impression during the handling of this case with employees that it is their view that the only measure of discipline that may be assessed is discharge, but the rule on its face unequivocally negates such a contention, as well as that there is no provision for suspension.

In erroneously asserting that there is no rule providing for suspension, employees also compound their error by associating the discipline imposed in this case with the "Brown System of Discipline," but suffice to say that the said discipline was imposed under the explicitly prescribed authority of agreed upon Rule 18 of the agreement between the parties hereto; and that where the Brown System is used, generally in connection with train and engine service employees, it is applied without a rule specifically providing therefor because it is a form of discipline clearly encompassed within the meaning of the generic word "discipline," appearing in the rule with those classes of employees, and could obviously be employed, if so desired, under the provisions of said Rule 18.

Carrier submits that no violation of agreement having taken place by carrier, as alleged by employees in part (1) of their statement of claim, that the claim in its entirety, including the monetary portion thereof set forth by employees in part (2) of their statement of claim, is devoid of merit, and respectfully requests that your honorable board issue a denial award.

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 claim is that Claimant was unjustly suspended for thirty days.

Rule 18 provides that an employe will not be discharged or disciplined without just cause, and that he will be given a hearing if he makes written request for it within ten days after his discharge or discipline.

In a written statement the local chairman reported that he was told by the Foreman in Charge that a hearing would be given if requested by Claimant in writing, but added that this "was an impossible request as Wade could not write."

The Organization properly objects to proof first offered by the Carrier in rebuttal, showing that Claimant could sign his name very well; but the matter is immaterial, since in any event Claimant could have signed a request by making his "X."

The evidence indicates that Claimant admitted his failure to store sand required for several locomotives, could give no reason for his failure, and on oral notification of suspension told the General Foreman "that he understood, and that it would be all right if that was what I wanted to do." This presumably indicates why no hearing was requested by Claimant.

In any event, the procedure provided by the Agreement was not exhausted on the property, since the claimant did not request a hearing to investigate the cause of his suspension. Consequently this Board is not in a position to consider the merits of his suspension.

AWARD

Claim dismissed.

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.