

Award No. 4757
Docket No. 4708
2-SOU-CM-'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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**
SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Carman H. C. Cleveland was improperly removed from service February 4, 1963, and discharged from service February 20, 1963.

2. That accordingly the Carrier be ordered to compensate the aforesaid employee for time lost February 4, 1963 - February 26, 1963.

EMPLOYEES' STATEMENT OF FACTS: Carman H. C. Cleveland, hereinafter referred to as the claimant employed by the carrier at Birmingham, Alabama, was taken out of service February 4, 1963, charged with "dereliction of duty."

Formal investigation was scheduled for February 6, 1963, by mutual agreement between Master Mechanic John Gerson, Jr. and Local Chairman W. H. Higgins investigation was postponed until February 8, 1963.

Formal investigation was held February 8, 1963.

February 20, 1963, the claimant was notified that he was being dismissed from the service of Southern Railway.

Claimant was notified verbally that he was being restored to service February 26, 1963.

This dispute has been handled with the carrier's officers designated to handle such matters, in compliance with the agreement, all of whom have refused or declined to make satisfactory settlement.

The agreement effective March 1, 1926, as subsequently amended is controlling.

POSITION OF EMPLOYEES: The claimant is subject to the protection of the provisions of the aforesaid controlling Agreement made in pursuance of the

CONCLUSION: Carrier has proven that:

(a) Under the current agreement former Carman Cleveland was not improperly suspended on February 4, 1963, nor was he improperly dismissed on February 20, 1963, as alleged by the Brotherhood.

(b) The charge against former Carman Cleveland of dereliction of duty was proven at a fairly and impartially conducted investigation. In fact, Cleveland conceded upon being questioned by the master mechanic that he did not properly perform his duties or assume the responsibilities of the job to which assigned. He conceded he did not make an inspection of car ATSF 271755 saying he assumed someone else had done so. Cleveland's dismissal was therefore for just and sufficient cause.

(c) There can be no showing that the discipline imposed was arbitrary or capricious or in bad faith. Carrier's action in dismissing Carman Cleveland is fully supported by the principles of awards of all four divisions of the Board.

(d) The board is without authority to substitute its judgment for that of carrier. Based on all the evidence of record the board cannot do other than make 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 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.

There is no question that substantial evidence adduced at the investigation supports the finding that claimant was guilty of the charge against him. The only issue is whether the penalty imposed was an arbitrary exercise of carrier's responsibility for maintaining discipline.

The carrier dismissed the claimant from service on February 20, 1963 and reinstated him on a leniency basis on February 26, 1963. Under the circumstances shown here, particularly that claimant resigned from carrier's service on April 17, 1963, we find these actions of the carrier tantamount to a disciplinary suspension. So considered it is not an arbitrary or unreasonable penalty for the offense committed.

A W A R D

Claim denied.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1965.

Keenan Printing Co., Chicago, Ill.

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