

Award No. 4906

Docket No. 4827

2-GC&SF-CM-766

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Apprentice T. W. Dennis, Jr. was unjustly dismissed from the service of the Carrier on January 27, 1964 at Cleburne, Texas.

2. That accordingly the Carrier be ordered to reinstate the Claimant with his seniority, vacation, hospital and insurance rights unimpaired, and also that he be additionally compensated at his applicable hourly rate of pay for all time lost retroactive to and including January 27, 1964 and to continue on the same basis until he is returned to service.

EMPLOYEES' STATEMENT OF FACTS: T. W. Dennis, Jr., hereinafter referred to as the carrier, as a carman apprentice at Cleburne, Texas, where the carrier maintains a shop and inspection forces.

The claimant was employed as a carman apprentice on the repair tracks and shop on the first shift, work week of Monday through Friday, rest days of Saturday and Sunday.

On December 16, 1963 the claimant was given notice to appear for investigation at 9:30 a.m., Monday, December 23, 1963, for violation on November 29, 1963 of Rule 19 of Form 2626 Standard, General Rules for the Guidance of Employees of the Carrier's ex parte rules. However, on December 18, 1963 the Local Chairman, John A. Grigsby, wrote Mr. O. H. Barker, Assistant Superintendent of Shops—Car, and requested postponement until January 7, 1964, until the claimant could be represented by the representative of his choice, who was the general chairman.

Under date of December 19, 1963, the Assistant Superintendent of Shops, Mr. O. H. Barker, wrote Local Chairman John A. Grigsby and granted the postponement and reset the investigation for 9:30 a.m., January 7, 1964. However, on December 24, 1963, Assistant Superintendent of Shops, O. H. Barker,

learn if the Carrier's investigation has been conducted in a fair, impartial way if the penalty imposed by the carrier has been compatible with the offense."

While much has been said by the employees in an effort to alleviate the claimant's guilt, the carrier asserts that the facts prove without a shadow of doubt that Rule 19 of Form 2626 Standard was violated by the claimant on December 5-6, 1963, and the reasonable conclusion to be drawn from the evidence developed is that it fully supports the action taken by the carrier in terminating the service of the claimant.

Part 2 of the claim, as stated by President Michael Fox of the Railway Employees' Department, which is quoted on Page 1 hereof, reads in part that "the Carrier be ordered to reinstate the Claimant with his seniority, vacation, hospital and insurance rights unimpaired," etc. During the handling on the property, the employees contended that claimant Dennis be compensated for "any and all medical hospital bills that are incurred during the time he is held out of service, and that his death policy be continued in force retroactive to the time he was advised that he was being removed from service on January 27, 1964." See letter dated March 30, 1964, from Assistant General Chairman J. F. Jenkins to the carrier's vice president and general manager, quoted in the carrier's statement of facts.

While it will be readily recognized by your honorable board that a claim of such nature is improper and has no support under any agreement rule, the carrier desires to further explain with regard to the employees' claim for compensation in behalf of Claimant Dennis "for all time lost" that Rule 33½ (d) of the "Shop Crafts' Agreement" simply contemplates compensation "for the net wage loss, if any, resulting from said suspension or dismissal" but even this would have to be predicated upon a finding of unjustified dismissal, which the facts will not support in this case.

In conclusion, the carrier respectfully reasserts that the claim of the employees should be denied in its entirety for the reasons outlined herein.

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.

The Board has reviewed the record before us. Rule 19—Form 2626 Standard, on which Carrier relies to justify its position in discharging Claimant, states many requirements put on employees such as withholding information, obey instructions, failure to give all the facts regarding irregularities, accidents, personal injuries or rule violations, requirements in reference to reporting for duty, nor absent themselves from duty, exchange duties or substitute other persons in their place without proper authority.

The record here does show clearly that claimant has demonstrated his lack of an effort to comply with the provisions of Rule 19. By his own admission he had on many occasions been absent from work without permission, and has failed on occasions to report his absences when required under the Rule.

It is the Opinion of the Board that claimant should be reinstated to his position with seniority and vacation rights unimpaired, but without payment for net wage loss and other considerations sought in Item #2 of the Claim.

AWARD

Claim sustained in accordance with the foregoing findings.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1966.