



Award No. 4913

Docket No. 4854

2-AT&SF-CM-'66

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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY — Coast Lines —**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman J. Zaragoza was unjustly dismissed from the service of the Carrier on August 7, 1963 prior to completion of his regular shift at Barstow, California.

2. That accordingly the Carrier be ordered to reinstate the Claimant with his seniority, vacation, hospital, group life insurance and dependents' insurance, and also that he be additionally compensated at his applicable hourly rate of pay for all time lost retroactive to the time of being removed from service on August 7, 1963, and to continue on the same basis until he is returned to service.

EMPLOYEES' STATEMENT OF FACTS: J. Zaragoza, hereinafter referred to as the claimant, was employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, as a carman at Barstow, California, where the carrier maintains a repair track and trainyard forces.

The claimant was regularly employed, bulletined and assigned as a carman on the cabooses tracks, working hours of 11 p. m. to 7 a. m., work week of Saturday through Wednesday, rest days of Thursday and Friday.

On August 14, 1963 the claimant was given notice to appear for formal investigation at 9 a. m. (DST), on August 23, 1963 in the office of the shop superintendent, account his allegedly being asleep, failing to take proper instructions from supervisor and failing to perform work assigned by supervisor of inspecting trains, being insubordinate and belligerent in dealing with his supervisor, in violation of Rules 19, 20 and 21 of Form 2626 Standard, general rules for the guidance of employees, 1959 issue.

However, on August 21, 1963, which was prior to the investigation being held, proper notice was sent to the shop superintendent, Mr. E. M. Hiatt, re-

Item 2 of the Employes' claim quoted hereinabove. See in this connection Second Division Award No. 3883.

In conclusion, the carrier submits that the investigation transcript reveals the claimant was guilty of insubordination, indifference to duty, discourteous deportment and provoking an altercation with his foreman in violation of General Rules 19, 20 and 21 of Form 2626 Standard. His request for a representative who was not promptly available and not required by schedule agreement, was properly denied inasmuch as capable representation, stipulated in the working agreement, was present in the person of his local chairman. Mr. Zaragoza was given a fair and impartial investigation, and in the absence of any evidence that the carrier's disciplinary action was arbitrary, capricious or in bad faith that action should not be disturbed.

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.

After a fair investigation hearing Claimant was informed of his discharge as follows:

"As a result of formal investigation * * * to develop facts and responsibility in connection with your being asleep * * * and failing to take proper instruction from supervisor and doing the work assigned by supervisor, being insubordinate and belligerent in dealings with supervisor, this is to notify you that you have been removed from service of the Santa Fe Railway Company."

There is no question that Claimant was guilty of insubordination, but the record contains no evidence whatever of the charge of being asleep on the job, with which the entire incident began. Under the circumstances the discipline imposed seems excessive, and we conclude that Claimant should be reinstated in service with seniority and vacation rights unimpaired, but without pay for time lost or other items claimed.

AWARD

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.

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