

Award No. 5206

Docket No. 5013

2-UP-BM-'67

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. 105, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Boilermakers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Boilermaker Donald G. Doolittle was unjustly dealt with when he was removed from service through arbitrary, capricious, and discriminatory actions of the Carrier on October 9, 1964.

2. That accordingly the Carrier be ordered to reinstate Donald G. Doolittle with all rights unimpaired and that he be made whole by compensating him for all time lost from January 12, 1965, and

3. That the Carrier be ordered to pay all premiums on said Donald G. Doolittle's insurance, health and welfare benefits, hospital dues to Union Pacific Employees' Hospital Association, and any other benefits he would have been entitled to had he remained in service.

EMPLOYEES' STATEMENT OF FACTS: Boilermaker Donald G. Doolittle, hereinafter referred to as the claimant, was employed in the Carrier's Omaha, Nebraska, Shops as a Boilermaker Welder. His assigned work days were Monday through Friday, with rest days Saturday and Sunday.

Claimant was employed by the Carrier from August 30, 1950 to October 9, 1964 (except for leave of absence for military service where he was honorably discharged). This is substantiated by transcript of claimant's record submitted herewith and marked as Exhibit 1.

Claimant had a perfect employment record with the Carrier, with no discipline assessed on his record.

September 17, 1964, claimant was notified to report to the office of the Superintendent of Shops for investigation and hearing on charge of violation of Rule 700.

It is respectfully submitted that the Organization's claim that Mr. Doolittle be reinstated and compensated for time lost is without merit, and should be denied.

All data used in this Response to Notice of Ex Parte Submission are of record in correspondence and/or have been discussed in conference with the Organization's representatives.

Oral hearing is requested.

(Exhibits not reproduced.)

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 claim is that Claimant "was removed from service through arbitrary, capricious and discriminatory actions", and should be reinstated with all rights unimpaired, pay for all time loss, and restoration of other benefits.

Claimant was notified of an investigation "on charge of violation of Rule 700 account conduct unbecoming an employe in connection with your record with the Omaha Police Department, which includes" three incidents of January 12, June 13, and September 6, 1964.

The first involved a quarrel at a bar after Midnight with a girl who accused him of an impropriety. Claimant denied the accusation, but her escort warned him not to do it again, and, according to Claimant, "hollered back something smart" on the street shortly thereafter; Claimant, therefore, twice fired a .22 caliber pistol, which was loaded with blanks. He was arrested and fined \$10.00 and costs on a plea of guilty to the charge of firing the pistol within city limits. According to the police report, on the preceding night he had used this pistol to scare someone with whom he had a bar room argument.

Again on June 13, 1964, after 1:30 in the morning, he was arrested for striking a woman and knocking her down at a parking lot near a saloon. When the case was called for hearing, he was released because the complaining witness did not appear, allegedly because she was in jail. According to him and his witnesses, he struck her because she threatened him with a block of concrete. They said that Claimant hit her in self-defense, but none of them explained why she attacked Claimant; he had been drinking, but was not intoxicated.

Again after Midnight on September 6, 1964, a girl whom Claimant had brought to a bar made trouble with another girl with whom Claimant had been dancing; at the bouncer's request she left, but returned, and again made trouble with a woman with whom Claimant was dancing. According to the police report, the Claimant then "physically mistreated" both women and was ejected by the bouncer and suffered a broken arm. The circumstances are not clear from the record, but Claimant testified that after the bouncer seized

him from behind and threw him out, "I challenged the bouncer to try to do it to my face"; presumably, this was just before his arm was broken.

When these charges were filed on September 17, 1964, Claimant had not returned to work, and the record does not show when he would have been able to do so.

In answer to leading questions, Claimant's witnesses testified that Claimant was not "in way responsible" for the troubles, and that "he was just a victim of circumstances."

At the hearing it was objected, first, that the charge did not involve any provision of the current Agreement; second, that the charge under Carrier's unilateral Rule 700 was not specific; and, third, that with reference to the incident of January 12, 1964, "an undue length of time elapsed before the investigation"; but (1) the Agreement does not limit discipline to violation of its provisions; (2) the investigation notice quoted Rule 700 in full, cited the three incidents, and (3) charged Claimant with "violation of Rule 700 account conduct unbecoming an employe" in connection with his police record including all three incidents; the hearing was originally set for September 22, 1964, but was postponed to October 6 at the committee's request. There is no contention that Claimant's interests were prejudiced by the delay. Furthermore, the January 12 incident was one of three cited to show Claimant's quarrelsome record, and if the charge had been made on that incident alone, it could well have been objected that one incident standing alone was insufficient.

Rule 700 provides that:

"Employes will not be retained in the service who are * * * quarrelsome or otherwise vicious * * *."

Despite the opinions of Claimant's witnesses that he was in no way responsible for these brawls, but was just a victim of circumstances, this Division cannot conclude from the record that the Carrier's action was arbitrary, capricious or discriminatory, or was unsupported by the record. Nothing in the agreement requires the Carrier to keep in its employ an employe whose quarrelsome ways may affect his associations with fellow employes and the public. The claim must, therefore, be denied; but, in view of Claimant's record on the property this Division believes that the discipline already suffered should suffice to cause him to control his quarrelsome disposition, and that Claimant should be reinstated to the Carrier's service with seniority rights unimpaired.

AWARD

Claims 1 and 3 denied.

Claim 2 sustained with seniority and vacation rights unimpaired, but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.