



Award No. 5245
Docket No. 5137
2-AT&SF-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick 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 Car Inspector C. R. Daughrity was unjustly suspended from the service of the Carrier on March 25, 1965 and unjustly dismissed from service on April 21, 1965 at Barstow, California.

2. That accordingly the Carrier be ordered to reinstate the Claimant with his seniority, vacation, hospital, dependents' hospitalization and life insurance, also, that he be additionally compensated retroactive to the time he was withheld or removed from service on March 25, 1965 and to continue at eight (8) hours each day at the applicable carman's rate of pay until he is returned to service.

EMPLOYEES' STATEMENT OF FACTS: C. R. Daughrity, hereinafter referred to as the Claimant, was employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Carrier, at Barstow, California, where the Carrier maintains a repair track and car inspector forces.

The Claimant was regularly employed, bulletined and assigned as a car inspector in the Trainyards, working hours on the first shift, work week of Friday through Tuesday, rest days of Wednesday and Thursday.

On March 24, 1965 the Claimant was given written notice to appear for investigation in the office of the Superintendent of Shops at 9 A. M., March 31, 1965, in regard to the alleged charges that his conduct was discourteous, abusive and involved use of profanity in dealing with fellow employees, and also charges of insubordination in his relation with supervisors, and alleged charges that the Claimant was under the influence of intoxicants while on Santa Fe property at approximately 3 P. M. on March 13, 1965, possible violation of General Rules for the Guidance of Employees, Form 2626 Standard, 1959 Issue, Rules No. 1, 3, 7, 19, 20 and 21. (Employees' Exhibit "A"). However, on March 25, 1965 the Claimant was given formal notice that he was being removed from service. (Employees' Exhibit "B").

On March 29, 1965 the Claimant, who was the Local Chairman, wrote a letter to the Superintendent of Shops, Mr. E. M. Hiatt, requesting a postponement of the investigation (Employees' Exhibit "C"), which is fully provided under Rule 33½, Memo No. 1: Paragraph (a), of the current working

"... such employe shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal." (Emphasis ours.)

Neither that rule nor any other rule of the Shop Crafts Agreement contemplates or provides for payment of "vacation, hospital, dependents' hospitalization and life insurance," as requested in Item 2 of the Employes' claim, quoted hereinabove, see in this connection Second Division Awards Nos. 3883, 4771, 4793, 4906, 4909, and 4913.

In conclusion, the Carrier respectfully avers that the facts developed in the formal investigation prove by competent evidence that Claimant Daugherty was guilty of rules violations which fully justified his subsequent dismissal. Such disciplinary action was neither arbitrary, capricious nor in bad faith and should not be disturbed.

The Carrier is uninformed as to the arguments the Brotherhood may advance in its ex parte submission, and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are necessary in reply to the Brotherhood's ex parte submission or any subsequent oral argument or briefs presented by the Brotherhood in this dispute. (Exhibits not reproduced)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all 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.

Claimant was charged with violating Rules No. 1, No. 3, No. 7, No. 19, No. 20 and No. 21 of General Rules for Guidance of Employes, Form 2626. He was removed from service on April 21, 1965, after a formal investigation. At the time of his suspension and discharge, Claimant was the Local Chairman on the property.

There is no probative evidence in the record that the Claimant violated Rules 1, 3, 7 and 19. He violated no safety rules, he was sufficiently conversant with the rules and special instructions, he was not intoxicated while available for duty, nor did he have possession or use of intoxicants or narcotics while on duty and he did not disobey instructions from proper authority, nor did he withhold information as provided in Rule 19. There is uncontroverted evidence that the Claimant was abusive to his fellow workers and to his supervisors. He used vile and profane language and he was unnecessarily quarrelsome. Even if he felt duty bound, as Local Chairman, to criticize his fellow employes for not observing a picket line, there was no good reason why he should have done so in a display of intemperate manifestations. In this respect, Claimant did violate Rules 20 and 21. But he recognized his error and apologized to those whom he abused.

Claimant was employed by this Carrier for about seventeen (17) years prior to his suspension and discharge. There are no previous records of disciplines. He was under great stress on March 13, 1965 because of a picket line placed by another labor organization; he had little sleep that day because of constant inquiries from his fellow employes; he was obligated as Local

Chairman to service and instruct the membership of his organizations. Profanity, while disagreeable and unnecessary, is not uncommon in railroad yards. In any event a dismissal from service is too severe a penalty for the offense. Claimant does deserve to be disciplined.

Upon the record and the investigation, it is concluded that the Claimant should be reinstated as an employe of the Carrier with seniority and vacation rights unimpaired, but without back pay or other benefits claimed.

AWARD

C. R. Daughrity shall forthwith be reinstated as an employe of the Carrier with seniority and vacation rights unimpaired, but without back pay or other benefits claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July, 1967.