



Award No. 5343

Docket No. 5119

2-SOU-CM-'68

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. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Carman J. Sciro, Birmingham, Alabama, was improperly suspended from service on May 4, 1965, and discharged from service May 24, 1965.

2. That accordingly the Carrier be ordered to restore the afore-said employe to service with pay for all time lost from May 4, 1965 and with job rights, seniority rights, vacation rights, pass rights and the protections and benefits due said employe under the hospitalization and life insurance policy with Travelers Insurance Company.

EMPLOYEES' STATEMENT OF FACTS: Carman J. Sciro, Birmingham, Alabama, hereinafter referred to as the Claimant, was employed by the Southern Railway Company, Birmingham, Alabama, hereinafter referred to as the Carrier, until May 4, 1965 at which time he was removed from service charged with "failing to properly perform your duties as a Carman, more specifically that you stenciled and failed to echometer the following cars C&O 16866, Sou. 78540, NC&StL 44105, L&N 6200, D&RGW 68882, AT&SF 276740, IC 20400 and WAB 6927." Formal investigation was held on May 13, 1965, copy attached and marked Exhibit A.

The trial officer designated by the Carrier was Mr. C. A. Jay, Master Mechanic, Birmingham, Alabama.

In a letter dated May 24, 1965 the Claimant was advised by the Master Mechanic that he was guilty as charged and was dismissed from the service of the Carrier, copy attached and marked Exhibit B.

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

judgment for that of the railway company, is left with no alternative but to make a denial award.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the Brotherhood's submission reserves the right after doing so to make response thereto and submit any other evidence for the protection of its interests.

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.

Claimant was dismissed from service after a complete and thorough investigation conducted in accordance with the terms of the Agreement. When asked if the investigation had "been held fair and impartial and in accordance with your scheduled working agreement" the Claimant and the Local Chairman and the Committeeman, who represented him, replied that it was "held in accordance with our current working agreement."

There are a number of facts established in the record upon which there is no serious disagreement. First, Claimant was instructed, and he so admitted, not to stencil his pool mark on a car until after he echometered it. Second, that his pool mark on a car presumed that he had echometered that car. Third, that he did stencil his pool mark on a number of cars before he echometered them. Fourth, that the echometer tests car axle journals ultrasonically to detect defects. Defective car axle journals may cause derailments and resulting loss to life and property.

Claimant testified that he stenciled his pool mark on cars without first echometering them because the echometer blew a fuse. And he did so "just to save time." The Foreman confirmed that he put a new fuse in the echometer "about a quarter or maybe 10 minutes of seven." Claimant told the Foreman that he had about 12 or 14 cars to echometer. The Foreman replied he did not know whether Claimant would have enough time to do this before his quitting time.

Whether or not Claimant returned and echometered the marked cars after the fuse was replaced is a matter in dispute. Claimant said that he did. The Special Service Patrolman who was assigned to observe the Claimant and other Carmen testified that the Claimant did not return to echometer the cars but instead went directly to the bath house, washed, changed clothes and left. The Foreman did not see Claimant echometer the cars after the fuse was replaced.

Whether Claimant did or did not echometer the cars after the fuse was replaced is immaterial to the charge that he had violated explicit instructions

not to stencil his mark until after the car axle journals had been tested with the echometer. This leaves for consideration the issue of whether the penalty of dismissal was justified.

The evidence shows that the Claimant had more than twenty (20) years of service before May 24, 1965 and up to that time had done his work satisfactorily; there had been no previous discipline or reprimand penalties. Whether Claimant did or did not echometer the cars after the fuse was replaced has not been firmly established. But the presumption, on the basis of the record, is that he did. This fact alone does not condone his violation of the rule as previously stated and it should not be so considered. He deserved to be disciplined. But because of his long and satisfactory service and because he may have echometered the cars, it is our judgment that a dismissal from service is too severe a penalty. He should have been disciplined and held out of service without pay for a reasonable length of time.

Claimant has now been out of service for more than two and one-half (2½) years. This is more than an adequate penalty. It is in this sense alone that we conclude that the Carrier has been arbitrary, capricious and unreasonable.

AWARD

Claimant 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 30th day of January, 1968.