

Award No. 5530
Docket No. 5385
2-C&NW-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the current agreement, Machinist Helper G. E. Schmidt was unjustly discharged from the service of the Chicago and North Western Railway Company on February 18, 1966.

2 — That accordingly, the Chicago and North Western Railway Company be ordered to restore claimant to service with seniority rights unimpaired, compensate him for all time lost, plus 6% interest; make him whole for all vacation rights; premiums paid for all hospital, surgical and medical benefits; pay premiums for Group Life Insurance, which would have accrued had he not been so unjustly discharged.

EMPLOYEES' STATEMENT OF FACTS: Machinist Helper G. E. Schmidt, hereinafter referred to as the claimant, was employed by the Chicago and North Western Railway Company, hereinafter referred to as the Carrier, as a laborer in August, 1963, and was transferred to a machinist helper in September, 1963, which position he held until discharged on February 9, 1966. During this period of time the claimant had a discipline free service record.

Upon reporting to his regular assignment on the second shift on February 9, 1966, claimant found himself to be under heavy tension and upset due to personal matters at home. Claimant thus knowing that he was not in the proper mental state to perform his assigned duties in a safe manner, requested leave to return home, as per Rule 20 of the controlling Agreement, prior to the start of his shift, which was denied by Foreman Harris. After the second such request claimant was given permission by Foreman Harris, to return home. Claimant thinking he had received proper permission, did leave after properly making out time slip.

It was later discovered that Foreman Harris' permission was overruled by Superintendent of Car Shop, R. E. Powers, which precipitated the instant dispute.

If it is found that charges are not sustained, such employe shall be returned to service and paid for all regular time lost."

It will be noted that Rule 35, quoted above, refers to pay for time lost, but makes no reference to fringe benefits claimed in this case. Under this rule the claimant would at most be entitled to actual time lost less earnings in outside employment (see Second Division Award No. 1638 involving the same rule and the same parties), if he were entitled to reinstatement with pay, which he is not. It will be noted that the rule makes no provision for payment of six percent (6%) interest or the fringe benefits referred to in the "Statement of Claim." In this respect, the claim in this case constitutes in part a request for a new rule, which is beyond the jurisdiction of this Board. The Board's authority is limited to interpretation of existing rules, and does not extend to promulgating new rules under the guise of interpretation of existing rules. See Second Division Award No. 3883.

The claim is without merit and should be denied.

All information contained herein has previously been submitted to the employes during the course of the handling of this case on the property and is hereby made a part of the particular question here in dispute.

(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 waived right of appearance at hearing thereon.

Claimant, a Machinist Helper, was dismissed from Carrier's service for walking off his job without proper authority on February 9, 1966 and for insubordination.

The record discloses that Carrier's Foreman J. J. Harris testified that he instructed Claimant to work as a Press Off Operator rather than a Press On Operator in Carrier's wheel shop in Clinton, Iowa on February 6, 1966, and that Claimant told him that if he didn't feel his work was satisfactory, Claimant was going home; that Claimant then handed him a time slip and told him he was going home since he felt they didn't need him there; that Claimant didn't do any work as a Press Off Operator and he did not have authority to go home on the date in question; that Claimant before starting work asked to be excused, which request was denied by Foreman Harris.

Claimant testified that he had checked out prior to Foreman Harris instructing him to work as a Press Off Operator for the reason that he was tense and had personal matters at home and that Foreman Harris told him it was all right for him to check out.

One of Claimant's witnesses, A. W. Anderson, testified as follows:

"Q. Does the committee have any statement they would like to make?"

S. (Mr. Anderson) Well, I would like to explain the procedure about removing a man from a job. The man should go on the job that he is asked to go on. The committee has to feel that way because that is correct. But that is contrary to statements made. As a representative, I have to admit that the way procedure is, you should protest, and then go on the job asked to go on."

Claimant's own witness thus admits that Claimant was wrong when he left his job without proper authorization of the Carrier. Therefore Carrier had just cause in disciplining Claimant in this instance for violating Carrier's rules.

Taking in consideration Claimant's clean past record and the seriousness of the offense involved herein, we feel that the penalty imposed in this instance by Carrier was excessive. While we do not condone Claimant's action in leaving his job without first securing permission from Carrier, we feel that the degree of discipline imposed was not reasonably related to the seriousness of the proven offense. Therefore Claimant's dismissal from service is hereby set aside and Carrier is directed to reinstate Claimant with accumulated seniority but without compensation for time lost.

AWARD

Claim partly sustained and partly denied in accordance with the foregoing opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1968.