



Award No. 5541

Docket No. 5445

2-CRI&P-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the controlling Agreement, Carman Daniel Linzy was unjustly dismissed from the service on September 9, 1966.

(2) That accordingly, the Carrier be ordered to restore Carman Linzy to service with all seniority and service rights unimpaired and compensate him for all time lost retroactive to September 9, 1966.

EMPLOYEES' STATEMENT OF FACTS: Carman Daniel Linzy, hereinafter referred to as the claimant, has been employed for sixteen years as a Carman by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the Carrier at Chicago, Illinois.

On July 21, 1966 the claimant, in response to an appeal from Carrier Officers for employees to help secure additional help, brought an individual by the name of H. G. Gamble to the Carrier's 49th Street Coach Shop to seek employment. While Mr. Gamble was waiting in the Freight Car Shop with the claimant for the Assist. Master Mechanic to arrive at the Shop, Mr. Vanderburg, Shop Engineer, who was acting as Freight Shop Foreman on this day and the claimant became involved in a disagreement over the fact that Mr. Gamble was waiting in the Shop.

On September 1, 1966 an investigation was held charging the claimant "for your violation of Rule N of the General Rules as contained in Form G-147 revised, on July 21st, 1966 at 7:50 A. M. Day Light Saving Time while on duty at the 49th Street Shop" and a copy of the transcript is attached hereto as Exhibit A.

The claimant was discharged on September 9, 1966 for allegedly being insubordinate, a copy of the discharge notification is attached as Exhibit B.

This dispute has been handled with the highest designated officer of the Carrier, who has declined to adjust it. The Agreement dated October 16, 1948, as subsequently Amended, is controlling.

tive bargaining agreement. His failure to do so will make him subject to discipline for insubordination."

Second Division Award 3001

"There was ample evidence adduced at the hearing to support the company's determination that the claimant was guilty of the charge of refusal to comply with the instructions of an assistant foreman."

Second Division Award 3267

"In view of the attitude of Mr. Collins and the fact that he had been twice before disciplined by his company, once for disobedience of an order, and upon the testimony supporting the charges, we cannot hold that the finding of the carrier or the discharge of Mr. Collins was not justified."

Second Division Award 3539

" * * * discipline was proper for claimant's vulgar expression of resentment, even though it may not have been without cause. * * *"

Second Division Award 3568

"Having chosen to disregard a proper and reasonable supervisory request and to arbitrarily abandon his job, he was guilty of insubordination and subject to discipline (dismissal)."

CONCLUSION

The procedural objections which are, if believed, of only slight substance are not sufficient to warrant prejudicial error and a finding that claimant was not given proper notice or a fair hearing.

Insubordination is a most serious offense and cannot be condoned in any respect. Obedience and order in the workplace or shop must be maintained. Here we have an employe who twice before has engaged in such forbidden conduct and was shown leniency so that he might learn to do what is required under the Rules. However, claimant has failed to learn from his experience and despite his dutiful apologizing for such action in the past he persists in such rebellious action towards his supervision.

An employe who does not want to remain in Carrier's employ and under its supervision ought not to be allowed to be reinstated or paid for time lost. Moreover, claimant's guilt as charged demanded his dismissal. Carrier's disciplinary action against claimant was proper. Therefore, your Board is respectfully requested to deny this claim.

(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.

This is a discipline case. Claimant is a carman, who was charged with violation of Rule "N" of the Carrier's General Rules on July 21, 1966 at 7:50 A. M. while on duty at Carrier's 49th Street Shop. Following an investigation the Claimant was dismissed from Carrier's service "* * * for being insubordinate in violation of Rule N of the General Rules as contained in Form G-147 Revised while on duty at 49th Street Shop on July 21st, 1966." Petitioner contends that Carrier dismissed Claimant from service without proper notice of the precise charges against him, and that the investigation failed to meet the requirements of Rule 34 of the controlling Agreement as to fairness and impartiality.

Carrier's defense is that the disputed notice specifically advised Claimant of the particular rule violated as well as the time and place when the events under inquiry occurred. Furthermore, Carrier contends that the investigation was fair and impartial, and that Petitioner's other procedural objection do not warrant a finding of prejudicial error.

The notice received by Claimant specifically referred to Rule "N" of the General Rules, which provides as follows:

"Rule N. Courteous deportment is required of all employes in their dealings with the public, their subordinates and each other.

Employes who are careless of the safety of themselves and others, negligent, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of good will, will not be retained in the service.

Employes must not enter in altercations, play practical jokes, scuffle or wrestle on company property." (Emphasis ours.)

Rule 34 of the controlling Agreement reads as follows:

"RULE 34. DISCIPLINE. No employe shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal. It is understood that 'wage loss' will be less compensation earned in any other employment."

Although Rule "N" includes various offenses, including insubordination, the record reveals that Claimant was fully familiar with the particular facts or events under investigation as evidenced by his testimony and that of a wit-

ness called on his behalf at the hearing. Consequently, he was neither deceived or misled as to the nature of the charges against him and had ample opportunity to prepare his defense. (Third Division Awards 12255 and 12898.) Hence, we must conclude that the notice was sufficiently precise to meet the requirements of Rule 34 of the Agreement.

Analysis of other procedural objections raised by Petitioner while the dispute was considered on the property fails to disclose prejudicial error during the conduct of the investigation. Although certain witnesses read prepared statements at the hearing, Petitioner was allowed to cross-examine them and offer rebuttal evidence through witnesses called on his behalf.

Finally, Petitioner urges that Carrier has failed to establish that Claimant was guilty of insubordination. The evidence is somewhat conflicting as to the exact verbal exchange between Claimant and Carrier's supervisor on July 21, 1966. Claimant denies telling the supervisor to "shut up" and produced a witness to corroborate his testimony, whereas two fellow employes who witnessed the altercation corroborated the testimony of Carrier's supervisor as to Claimant's conduct. Despite such conflicting testimony, the weight of the evidence reveals that Claimant's demeanor was abusive, quarrelsome and disobedient, which cumulatively was sufficient to support Carrier's findings of insubordination.

In view of Claimant's previous violation of Rule "N" of the General Rules arising out of similar conduct, the punishment cannot be said to be arbitrary, capricious or unsupported by the record. Accordingly, we will not upset the punishment decided upon the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1968.