

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

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That Hostler Helper, S. P. Hillman, North Little Rock, Arkansas, was unjustly dealt with when he was dismissed from the service of the Missouri Pacific Railroad Company effective February 15, 1975.
2. That accordingly, the Missouri Pacific Railroad Company compensate Hostler Helper, S. P. Hillman at the pro rata rate of pay for each work day beginning February 15, 1975, until he is reinstated to service and in addition he receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Hostler Helper S. P. Hillman, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Hillman an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative,

the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto, was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

In the instant case, Claimant is a Hostler Helper at Carrier's North Little Rock, Arkansas diesel facility, with two and one-half years of service.

The record clearly shows that Claimant did not deny that he left work early without permission on Sunday, December 29, 1974, and did not fuel the engines which he had placed on No. 2 pit at the service track at approximately 2:45 PM. -

Moreover, Claimant's personnel file reveals that he had received a 30-day actual suspension from October 6 through November 5, 1974, for leaving his assignment early without permission of his supervisor, and on November 17, 1972, he was verbally reprimanded for watching television in the employees' locker room while on duty.

Under the circumstances, therefore, we cannot find any basis for setting aside or modifying Carrier's discipline, and we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of December, 1977.