

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

The Second Division consisted of the regular members and in addition Referee John P. Devaney when Award was rendered

PARTIES TO DISPUTE:

RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L. (BOILERMAKERS)
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Claim for time lost, Vance Lightizer, Silvis Shops.

FACTS.—Vance Lightizer was employed as a boilermaker in the shops of the carrier at Silvis, Illinois. Suspended on June 8, 1934, for failing to comply with instructions and leaving an assigned task without permission. He was told to report for investigation on Monday, June 10, but did not do so. Investigation was held on June 20, 1934.

The record indicates that Lightizer, who was a lead boilermaker, had been warned to comply with instructions and rules of the company.

The particular act for which he was suspended was leaving an engine upon which he was working. The explanation as appears in the record indicates that he was aiding one Kent at the time, and he was absent for but a few minutes.

The record further discloses that he was a lead boilermaker, and part of his duties were to instruct and assist others, although it is admitted that in this instance he was not instructed to assist Mr. Kent.

On August 14 he was permitted to return to service, negotiations having been conducted directly by Mr. Lightizer with the officers of the company, and through Mr. F. L. Mulholland, attorney for the Railway Employees' Department.

POSITION OF EMPLOYEES.—That he was unjustly suspended or dismissed from service, and that he should be reinstated with his seniority rights unimpaired, and compensated for wage lost.

That the record and evidence does not substantiate the claim that he was absent from an assigned task without just reason, or that he did not give a full eight hours service to the company on the date of the claimed infraction of the rule.

That he was not obliged to follow Rule 33, covering grievances, for the reason that the Rule does not limit him to other methods of disposing of his grievance, and for the further reason that the local chairman at point employed was hostile to him and to those who were associated with him and had so indicated in advance of the hearing. That the hearing held in the office of the superintendent of shops on June 20, 1934, does not meet the requirements of Rule 34 of the schedule of rules then in effect, which provides in part "that no employe shall be disciplined without a fair hearing by a designated officer of the railway."

That the claim here advanced by the carrier, that Lightizer failed to give eight hours' work on the date in question and left assigned work, is not the real cause for the suspension but is a subterfuge.

POSITION OF CARRIER.—That Lightizer was justly suspended or dismissed from service on June 8, 1934, for failure to comply with instructions and leaving his job to which he had been regularly assigned, without permission.

He was told to report for investigation Monday morning, June 10, 1934, but failed to do so. Investigation held on June 20, 1934, the result of which sustained the charge made that Lightizer had left the job on which he was working without permission.

That he had not given the carrier full eight hours' work on that day.

Mr. Lightizer was permitted to return to work on August 14, 1934. His return to service was a result of compliance with a leniency plea.

Investigation clearly proved the correctness of the charges made against Mr. Lightizer, and his request for payment of time lost because of his suspension from service is not supported by the contract.

The allowance of this claim would restrict the carrier in the application of discipline.

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.

The parties to said dispute were given due notice of hearing thereon.

FURTHER FINDINGS.—It is not disputed that on June 8, 1934, Mr. Lightizer left his work at approximately 3:45 P. M. without permission of his foreman. It is claimed in the record that in his capacity as lead boilermaker (for which he received a 5¢ differential in wages) Mr. Lightizer's duties are defined in Rule 32 as "assigning and directing the work of others", and he had previously been informed by the foreman that actual work on the job would be required of him whenever necessary, or when such might be beneficial in speeding up the work.

There is no substantial support in the record for the claim that Lightizer failed to give the carrier full eight hours of work on the date of the claimed infraction of the Rule.

We further find that leaving his assigned task without permission, in view of Rule 32, is without support in the record, and that Mr. Lightizer was unjustly suspended or dismissed from service; and that being so unjustly suspended or dismissed from service, he is entitled to his seniority rights unimpaired and compensation for wage lost, unless his failure to comply with Rule 32 as to the matter of handling his grievance would deprive him of relief from this Board. We find that it does not so deprive him for the reason that the local chairman at the point employed was, as the record disclosed, hostile to Mr. Lightizer and to those who were associated with him in a labor movement, which the carrier did not wish to encourage.

This is not the usual case of discipline by the ordinary employer. We agree that railroad management must accept full responsibility for its employes and their fair and just discipline. Where, however, there is an unusual situation existing, great care should be taken to protect the rights of employes who are dependent upon their wages for their livelihood, and who may be dealt with in arbitrary manner in a time of stress.

Apparently there was no demand made upon Mr. Lightizer to sign a waiver of back pay, although others similarly situated had been asked to do so.

It is claimed he was reinstated on a leniency plea. The record discloses the fact that Mr. Mulholland, attorney for the Railway Employees' Department, communicated with the carrier and requested his reinstatement.

It is likewise not to be doubted that he wished to return to his employment.

The record in this case is long and filled with testimony relating to sharply disputed issues of fact. We feel it would serve no useful purpose here to review the situation as it existed at Silvis at the time of the dismissal, or to attempt to reconcile the testimony of men who differed on questions that were not directly related to the work which was then being performed in the shops.

AWARD

Claim for lost time while out of service is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 13th day of February, 1936.

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 23,
DOCKET NO. 18**

NAME OF ORGANIZATION: Railway Employees' Department, A. F. of L.
(Boilermakers)

NAME OF CARRIER: The Chicago, Rock Island & Pacific Railway Company

Upon application of the representative of the carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

It is the intent of Award No. 23, Docket No. 18, that the railroad company shall pay Mr. Lightizer for lost time while out of the service, less any amount earned in other employment.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1936.

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**INTERPRETATION NO. 2 TO AWARD NO. 23
DOCKET NO. 18**

NAME OF ORGANIZATION: Railway Employees' Department, A. F. of L.
(Boilermakers)

NAME OF CARRIER: Chicago, Rock Island & Pacific Railway Company

Upon application of the representative of the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The award contemplated that Mr. Lightizer should be compensated for time lost account being held out of service on June 8, 1934, until again restored to service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1937.

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