

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:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Shall Machinist J. F. Hartung be reinstated and paid for time lost?

FACTS.—J. F. Hartung, machinist, was employed at the Pine Bluff shops of the carrier. The shop was closed on December 23, 1933. On January 4, 1934, notice that the shop would reopen on January 8, 1934, was posted on the bulletin board, and further notice of the said fact was carried in the local newspaper.

In the meantime, or on or about January 1, 1934, Hartung—who was then on furlough—obtained employment with the C. W. A. On January 5, 1934, he wrote to the management requesting a leave of absence for sixty days. This request does not set forth reason for such leave of absence. The record disclosed the fact that the request for leave of absence was received by the carrier on January 8, 1934, on the identical day that the shop at Pine Bluff was reopened. No action was taken on his request for leave of absence and no reply made to the letter containing such request, except as it can be said that the carrier replied by writing to Hartung on January 10, 1934, advising him that he was discharged. This letter was followed by a further letter from the carrier to Hartung on January 16, 1934, requesting that he turn in his employee's pass. Hartung continued to work for the C. W. A. for approximately three months. For several months prior to the date of the occurrences herein set forth, Hartung had worked approximately 12 days every other month, except that for two months immediately previous to his discharge he had worked 12 days per month.

He had followed the work of machinist and autogenous welder for approximately 28 years, and on January 10, 1934, the date of the dismissal, had approximately 9 years and 4 months' seniority rights with the carrier.

The work with the C. W. A. paid \$1.00 per hour, which was 23½ cents more than Hartung would have received from the company had he returned to his employment.

POSITION OF EMPLOYEES.—That Hartung was unjustly dismissed for reasons quite aside from his failure to report for work on January 8, 1934. That the work at the Pine Bluff shops of the carrier was uncertain and intermittent and that Hartung was obliged to seek outside employment in order to make a living for himself and family.

That it is customary for employees to seek outside employment, and this is the first and only case in which the company took the drastic action here taken.

That Hartung did not violate Rule 3-6-4.

That Hartung did not violate Rule 3-6-5.

That the carrier ignored Hartung's request for a leave of absence, although granting same to other employees making similar requests.

That the company employed a sufficient number of electric or oxyacetylene welders as to have permitted it to have granted Hartung's request for leave of absence, under the circumstances.

That the punishment meted out to Hartung is unusual and unnecessarily severe and unfair under all the circumstances in this case.

That Hartung should be restored to his full seniority rights with pay for time lost as a result of discharge.

POSITION OF CARRIER.—That Hartung was dismissed for just cause. That he violated Rule 3-6-4 of the agreement between the carrier and the Association of Metal Craft Employes, which was in effect at the time of his dismissal.

Rule 3-6-4 reads:

“Has engaged in any other business or employment without the Company’s written consent.”

That Hartung violated Rule 3-6-5, which reads:

“Has without just cause absented himself from his employment without the Company’s written consent, or when such absence is unavoidable, has failed to notify his foreman of such absence, and the reason therefor, as soon as he learns of the necessity of such absence, and in any event, within twenty-four hours after the time when he should have reported for work.”

That Hartung violated the general rules then applied by the carrier for the management and discipline of its employes, which rule reads:

“P. Employes must not absent themselves from duty nor provide a substitute without proper authority.”

That Hartung’s actions show that he had abandoned his seniority rights and his position with the carrier.

That the violation of rules by Hartung imposed a serious hardship on the carrier.

That mere written notice to the superintendent of motive power, requesting a leave of absence, is not all that is necessary to be done to secure same.

That Hartung did not appeal his case according to the provisions of Rule 4-8, and took no action in protest of his dismissal until March, 1935, more than a year after the date of his discharge.

That the claim of J. F. Hartung should, in all things, be denied.

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.—Hartung’s seniority rights with the carrier date back to August 17, 1925. He was No. 2 on the seniority list, being designated as an autogenous welder. For more than a quarter of a century he had been employed by railroads in various capacities, finally becoming a specialist in welding. That employment at the Pine Bluff shops of the carrier, on account of the depression and for reasons beyond the control of anyone, was uncertain, intermittent, and made necessary the effort on the part of men situated as Hartung was situated to find and develop other sources of income.

That after the shop had closed on December 23, 1933, Hartung did attempt to secure other employment and obtained such employment with the C. W. A. Thereafter, on January 5, 1934, he mailed to W. G. Miller, superintendent of the Pine Bluff shops, a request for leave of absence for 60 days. This letter was opened by the clerk to the superintendent of motive power on January 8, 1934, but was never answered except to notify Hartung by letter dated January 10, 1934, that he had been discharged. It is claimed that Hartung violated Rule 3-6-4 and Rule 3-6-5. These rules cover the matter of the employe absenting himself from his employment without the company’s written consent.

It is further claimed that Hartung failed to follow Rule 4-8 in that within three days after receiving such notice of discharge he did not “file with his immediate superior officer a written statement setting forth in full such grievances and request an investigation thereof.”

Rule 4-8 reads in part as follows:

“Should an employe believe that an order, rule, direction, practice, or working condition made or prescribed by the company for its officers, etc.”

If we were to decide this case without regard to the broad equities underlying the same, we should be obliged to inquire carefully into the meaning of the words "order, rule, direction, practice, or working condition made or prescribed by the company or its officers", as used in this Rule, and to determine whether or not the letter of January 10 discharging Hartung comes within the meaning of any of the terms used within this Rule; or whether it was intended by the parties that it should be covered by the said Rule and be construed as an order, rule, direction, practice, or working condition.

Hartung did not seek any relief under the Rule in question and permitted his case to remain dormant until presented to this Board.

A strict application of the rules might oblige us to find that Hartung violated Rule 3-6-4 and Rule 3-6-5, and that he has failed to process his case according to the provisions of Rule 4-8 then in effect on the property.

If we were to consider the matter of the established custom and practice from the conflicting claims which appear in the file, it might be necessary to find that the carrier did not give Hartung's request for a leave of absence that consideration which an employer is obliged to give such respectful request, and that the action in dismissing him from service was arbitrary and wilful, or that Rule 4-8 does not apply in that the letter of discharge was not an order, rule, direction, practice, or working condition, within the meaning of said Rule and was never intended so to be.

We are constrained to reach a conclusion based on a fair and just consideration of all the facts. While the carrier might have had reason to administer discipline and might have been justified in so doing, and with full recognition of the right of the employer to be responsible for the discipline and management of his employees according to agreement entered into between them and with fair and proper consideration for their rights as employees, we conclude that the discipline administered in this particular case is unduly severe and should be modified.

AWARD

J. F. Hartung will be reinstated with full seniority rights, but claim for time lost is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1936.