

Award No. 197
Docket No. 191
2-D&RGW-MA-37

**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. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That C. W. Vaughn, machinist, Grand Junction, Colorado, be reinstated to service with his seniority rights unimpaired and be paid for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. W. Vaughn, machinist, was furloughed from service at Grand Junction, Colorado, on June 14, 1936. On June 30, 1936, and while then on furlough, he was officially advised by Master Mechanic W. W. Lewis of being charged with and suspended from service for insubordination, which charge was investigated during a hearing which was held at Grand Junction on July 20, 1936.

POSITION OF EMPLOYEES: At the outset it is desired to point out that Mr. Vaughn served the Denver and Rio Grande Western Railroad Company for a period of approximately 18 years as a machinist and also as a supervisor of various titles and responsibility. Almost one-half of his actual service with this railroad was served in one capacity or another as a supervisor, on which account it is assumed that he had a reasonable conception of both the need and desirability of proper discipline among employes as well as their requirements for ordinary respect to their supervisors, and because of this we disbelieve and contest the charge against Mr. Vaughn for the alleged insubordination. It is also pointed out that at the time of the alleged violation, Machinist Vaughn was a furloughed employe and not engaged in the service of carrier.

POSITION OF CARRIER: The personal record of Mr. Vaughn shows the following service on this property:

		From	To	
Gang Foreman	Salt Lake	Feb. 18, 1918	July 1, 1920	Resigned
Machinist	Burnham	Mar. 26, 1928	Nov. 11, 1928	Promoted
Enginehouse Foreman	Salida	Nov. 11, 1928	Nov. 19, 1928	Promoted
General Foreman	Salida	Nov. 19, 1928	June 15, 1931	Transferred
General Foreman	Grand Jct.	June 15, 1931	May 5, 1934	Demoted
Back Shop Foreman	Grand Jct.	May 5, 1934	Feb. 1, 1935	Promoted
General Foreman	Grand Jct.	Feb. 1, 1935	June 25, 1935	Demoted
Back Shop Foreman	Grand Jct.	June 26, 1935	Nov. 15, 1935	Promoted
General Foreman	Grand Jct.	Nov. 15, 1935	Jan. 16, 1936	Discharged
Machinist	Grand Jct.	April 12, 1936	June 14, 1936	Force reduction

July 31, 1936, dismissed from service account insubordination as result of investigation held at Grand Junction, Colorado, July 20, 1936.

Our records in this case indicate that Mr. Vaughn was dismissed from the service as general foreman at Grand Junction, January 15, 1936, and was re-hired by Master Mechanic Lewis as a journeyman machinist April 12, 1936, being subsequently laid off account force reduction, June 14, 1936.

During the period between June 14, and June 27, 1936, Mr. Vaughn, while out of service on several occasions called Master Mechanic Lewis at his home on the telephone in connection with his being put back to work, particularly as a foreman. The last telephone conversation Mr. Lewis had with Mr. Vaughn was on June 27, and as result of this conversation Mr. Vaughn was given a notice, July 2, 1936, dated June 30, 1936, that he was held out of service pending investigation on a charge of insubordination.

July 10, 1936, Mr. Vaughn called the master mechanic's office and requested an investigation which was given him at Grand Junction at 2:00 P. M., July 20, 1936. July 31, 1936, Mr. Vaughn was advised that as a result of the investigation held July 20, 1936, he was dismissed from the service.

The carrier contends that the investigation, transcript of which is submitted as supporting evidence, fully justified the dismissal of Mr. Vaughn and directs the attention of the Board to the testimony of Master Mechanic Lewis.

There is no question in the mind of the carrier but that Mr. Vaughn was not only insubordinate in his telephone conversation with Master Mechanic Lewis, but is its belief that he was also under the influence of liquor.

The carrier admits that this investigation was not held within the prescribed ten days as provided by Rule 33 of the agreement. Neither was the case appealed and handled by the organization in accordance with the prescribed ten day period of the rule. As a matter of fact, the case was never appealed to the master mechanic at Grand Junction, it being taken up direct with the acting mechanical superintendent on October 15, 1936, approximately three months after Mr. Vaughn was dismissed.

The carrier holds that the statement made by the employe representative of Mr. Vaughn at this investigation, which reads:

"These charges were of insubordination and I believe that we have held it in regard to Rule 'G' but I trust result of this case will be judged and affixed according to insubordination and plead leniency in this case."

upholds its contention that Mr. Vaughn was guilty of insubordination, otherwise this employe representative would not have pleaded for leniency in this case.

OPINION OF THE DIVISION: This case presents a situation where disciplinary action was taken against a furloughed employe. It must be distinguished from cases involving disciplinary action taken against employes engaged in active service.

Even assuming all the charges brought by the carrier against Machinist Vaughn to be true, and they are in fact controverted, there is in our opinion insufficient reason to justify his dismissal from service. This incident, while annoying, should have called for tolerance and not discipline.

The claim of the employes must be sustained and Machinist Vaughn should be reinstated in service with seniority rights unimpaired and paid for all time lost.

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.

The carrier acted without justification in refusing to restore C. W. Vaughn to service when the time came for him to be so restored.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1937.