

Award No. 279

Docket No. 290

2-L&A-FT-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 59, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Federated Trades)**

LOUISIANA AND ARKANSAS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Machinist W. H. Winko and Boilermaker C. N. Smith be reinstated with seniority unimpaired and paid for all time lost as per agreement dated August 1, 1929, as a result of their discharge on March 7, 1935.

EMPLOYES' STATEMENT OF FACTS: Machinist W. H. Winko and Boilermaker C. N. Smith were working on a night shift and during the course of their duties made an inspection and repairs to locomotive No. 106 during the early morning hours of March 2, 1935. Government Inspector C. H. Pendleton later made an inspection, at 8:30 A. M., removing the engine from further service, issuing a form five for the following defects until properly repaired:

- 1st. Deck apron worn and ragged.
- 2nd. Left back knuckle pin bushing worn 11/32" larger than pin.
- 3rd. Right and left front driving springs being out of level.
Left front spring being out of level 4½".

POSITION OF EMPLOYES: Machinist W. H. Winko and Boilermaker C. N. Smith were removed from the service of the Louisiana and Arkansas Railroad on March 7, 1935, by letter from General Foreman C. D. Thorpe. At that time the legitimate agreement between the shop employes and management had been abrogated and the employes were working under a set of posted rules which were not agreed to by the employes. For this reason, Machinist Winko and Boilermaker Smith did not have a proper investigation and an opportunity to present their views in the matter why full inspections were not made. These employes were working under a condition and authority from their superiors to make such running repair inspections on their shift that they could complete on their shift. Neither Machinist Winko nor Boilermaker Smith were regular assigned inspectors and not receiving the rate of pay comparable to the Federal inspectors who were on the day shift.

Investigation developed that locomotive No. 106 came out of the Minden, Louisiana, back shop on January 24, 1935, and received a monthly inspection on February 24 and had made two round trips to Greenville, Texas, before being removed from the service by the Government inspector on the above named defects. We contend that under the provisions contained in the law for Federal Inspection of Locomotives, responsibility has been transposed based on Rule 101, which states:

ever, neither Winko nor Smith indicated that they would profit by the discipline assessed, and, as above stated, attempted to justify themselves by making incorrect statements, thus adding insubordination to the violation of the rules, and for these reasons carrier does not believe discipline would have the effect of improving the work, service or attitude of these complainants and considers its action just and proper.

Carrier's further position is that hearings were granted when requested and, aside from the hearings granted, as above outlined, it had no formal request for hearing from the representatives of the organization or anyone else from 1935 to 1937, a period of two years, until a request was made for a conference by the representatives of the shop crafts to negotiate a new agreement. At this time the case of these two individuals, together with other cases, were injected into and attempt made to include these discipline cases as a part of the matter before the conference. It was finally decided, and representatives of the American Federation of Labor were notified by the management that discipline and other cases must be separated from the wage and working agreement negotiations, and that such negotiations would not be handled jointly. It was the understanding of carrier that by granting a new agreement, again recognizing the shop craft organizations on carrier's property, that all past differences would be eliminated. Such an agreement was signed October 20, 1937, covering the cancellation of shop rules of February 9, 1931, increasing the rates of pay of the employes, bringing them back to the same basis of pay as 1929, and giving the men a better contract than they previously had. After said agreement was signed, however, and made effective, demand was again made by the organization for the reinstatement of these two men and others.

Carrier submits that these men were properly and justly disciplined; that they were given investigation and hearings as prescribed by law; that there is nothing in their statements to justify their violation of rules or insubordination, nor to justify carrier in rescinding its action and/or return them to service, and respectfully requests that the Board so find.

Carrier reserves unto itself any and all rights it might have with respect to jurisdiction or on the merits, both before this Board and in the courts, and requests that if this Board assumes jurisdiction hereof, that it be heard orally and on brief.

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 waived right of appearance at hearing thereon.

The two contending parties disagree as to whether the agreement dated August 1, 1929, or the posted rules dated February 9, 1931, were properly in effect when this dispute arose. However, the rule applicable reads as follows:

"No employe will be dismissed or suspended without just and sufficient cause. If after proper investigation it is found that a man has been unjustly discharged or suspended he will be reinstated and paid for all time lost."

and is the same in both instances, and we, therefore, do not pass upon this point.

The employes contend that Winko and Smith did not have a "proper investigation" or a "thorough investigation." However, the record is clear to the effect that conferences or investigations were held subsequent to the discharge of these two men, when the issues involved were discussed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of November, 1938.