Award No. 470
Docket No. 422
2-CStPM&O-FT-'40

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 75, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (FEDERATED TRADES)

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the Chicago, St. Paul, Minneapolis & Omaha Railway Company, by failing to give thirty (30) days' notice, violated the provisions of the Railway Labor Act, as amended, and the current agreement by arbitrarily posting notices in the shops and car yards, on July 12 and 13, 1939, advising that the Browne System of Discipline had been placed in effect as of July 1, 1939; further, the establishment of this system violates Rule 34-T, current agreement.

EMPLOYES' STATEMENT OF FACTS: Under date of July 12, 1939, effective July 1, 1939, a bulletin was issued and posted in the shops and roundhouses of the locomotive department, Omaha Railway, placing into effect a system of discipline by educational bulletin and demerit marks. (See Exhibit 1, quoted below.)

Under date of July 13, 1939, effective July 1, 1939, a similar bulletin was issued and posted in the car shops and car yards of the car department placing into effect a—

"System of discipline by educational bulletin and demerit marks."
(See Exhibit 2, quoted below.)

Rule 37, National Agreement for shop craft employes, effective September 20, 1919, reads as follows:

"An employe who has been in the service of the railroad 30 days shall not be dismissed for incompetency, neither shall an employe be discharged for any cause without first being given an investigation."

In connection with the application of Rule 37, National Agreement, the following interpretation of Rule 37 of the National Agreement was officially issued, clearly showing that Rule 37 does not provide for discipline by suspension.

"Mr. Lyman Delano, Federal Manager,
Atlantic Coast Line Railroad,
Wilmington, N. C.

Dear Sir:

Referring to your letter to Mr. W. S. Carter, Director, Division of Labor, in which you submitted, among others, a difference of

In this connection, the carrier would call to the attention of your Board the extracts quoted by the carrier in its statement of facts, wherein the committee, in their letter of June 11, show very clearly they are relying on Rule 34-T in this case. The carrier has indicated that no discipline is applied unless employe is given a full and fair investigation. This being so, there cannot be any violation of Rule 34-T of the current schedule, as the only prohibition in that rule is that a hearing is required before discipline is administered.

The carrier would reiterate and call to the attention of the Board its position hereinbefore stated that the Labor Board definitely ruled out the interpretation of the United States Railroad Administration in connection with Rule 37 of the National Agreement. Therefore, such rule and interpretation are dead, have ceased to exist and are as though they had never existed.

The carrier would ask your Board to refuse to take jurisdiction of this case for the reasons as indicated in the record, that is, the committee is asking your Board to write into the existing agreement an additional rule not now contained in the agreement. If your Board does take jurisdiction of this case over the protest of the carrier, then the carrier would ask your Board to find as follows: the application of the educational system of the carrier to shop craft employes is not in violation of Rule 34-T, or any other rule of the current agreement.

The carrier asks that your Board deny the 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.

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

These findings and opinions apply to Docket No. 421, Award No. 469 and Docket No. 422, Award No. 470. Although the facts are different, they involve one principle and consequently will be discussed together.

The question involved is over the right of the management to impose any system of discipline not provided for by the schedules. In Docket No. 421 there is involved a claim for five days' time lost through suspension. Docket No. 422 involves the institution of the Browne Discipline System of merits and demerits. A sufficient accumulation of the latter warrants discharge.

It is claimed both of these violate Rule 34-T of the agreement. There is nothing whatever in the agreement covering suspension.

Rule 34-T provides that an employe having served thirty days "shall not be dismissed for any cause without being given a hearing." Many schedules embrace disciplinary action including suspension as well as dismissal in comparable rules.

The contention of the organization here is that the carrier can do nothing other than discharge a man even for minor irregularities.

Rule 34-T is identical with Rule 37 of the National Agreement covering shop craft employes, effective October 20, 1919. The Assistant Director of the Division of Labor of the Railroad Administration issued an interpretation on this rule February 27, 1920, holding that it "does not provide for discipline by suspension."

The organization here involved has consistently opposed the use of suspension as a measure of discipline. When the agreement here involved was arrived at, no effort was made on the part of the management to have incorporated any provision for suspension therein. Until the instant cases arose there had been no practice of suspending as a matter of discipline for a definite number of days.

As to Docket No. 422, the Browne System was placed into effect by ex parte action of the carrier as of July 1, 1939, so far as the crafts here involved are concerned. It had been in effect in other parts of the carrier's organization, but the record does not show whether or not that may have been by agreement. It was placed into effect so far as other branches of the service were concerned, July 1, 1930. In 1934, the management indicated to the organizations here involved it was to be extended June 1, 1934, to the crafts here involved. They immediately protested the matter and it was left in abeyance until without further notice it was placed into effect July 1, 1939.

This the organization claims is not only a violation of Rule 34-T, but also of the Amended Railway Labor Act itself, in that it constitutes a change in working conditions not pursuant to agreement or notice.

We think both contentions are sound. We are not concerned with the question of whether suspension being milder than discharge and the Browne System being milder than either, they may be more advantageous to the employes than discharge. We are concerned with the question of what the contract provides and the conclusion is inescapable that these new forms of discipline cannot be instituted without some understanding with the organization concerning how they are to be operated.

The conclusions in this case are predicated on the rule and its history on this property.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. A. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1940.