

Award No. 1129
Docket No. 1065
2-CRI&P-EW-'46

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)

THE CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Electrician Lloyd P. Anderson is entitled to be reinstated in the service with all seniority and privileges accruing thereto restored, and with pay for time lost due to having been unjustly discharged for the failure of Diesel Engine No. 605 on January 22, 1945.

EMPLOYEES' STATEMENT OF FACTS: Mr. Anderson has been employed by the Rock Island Lines for at least sixteen years, having a seniority date as electrician helper of February 14, 1929, at Horton, Kansas, and a date as electrician helper at Armourdale, Kansas, of September 30, 1937.

Because of the shortage of electricians on the Rock Island during this present national emergency, the International Brotherhood of Electrical Workers agreed with the carrier to relax on the electricians' qualification Rule 100 to permit electrician helpers to be promoted to electricians and perform the work embodied in electricians' classification Rule 101. In March, 1941, by request of the carrier, Mr. Anderson was promoted to electrician.

An agreement governing such promotions was agreed to and signed by representatives of the carrier and representative of the employees in Chicago, Illinois, March 9, 1943, and in line with the provisions of this agreement, with full knowledge and permission of the carrier, Electrician Helper Lloyd P. Anderson waived his rights as electrician helper on March 20, 1943, and since that date has been carried on the electricians' seniority roster.

On January 22, 1945, Mr. Anderson was employed as electrician on the Rocket track at Kansas City, and in line with his tour of duty Mr. Anderson was required to change some brushes on main generator to Eng. 605. After this engine left the Rocket track and arrived at the Union Station, a flash over occurred to the generator that Mr. Anderson had changed brushes on.

Because of the failure of this engine, Mr. Anderson was required to stand investigation on January 22, copy of which is submitted and identified as Exhibit A, and on March 7, Mr. Anderson was issued a dismissal letter, copy of which is submitted and identified as Exhibit B.

This dispute has been handled in accordance with the applicable agreement for settlement up to and including the highest designated carrier officer

"Q. Mr. Hanne, do you have anything further to say.

A. Mr. Anderson has been employed by the Rock Island for the past 18 years and has been in no serious difficulty previous to this. He was on the job the night of January 21, maintaining his equipment at the balance of the equipment there was no malice intent in leaving this brush on the top of the commutator, it was just an oversight which anyone could do. He has not served his time as an Electrician but has come up from the ranks of a Helper and has worked faithfully during this emergency doing the best he can. He realizes the damage he has caused and accepts the responsibility. We feel that due to his years of service we can reasonably ask for leniency." (Emphasis added.)

The record is quite clear: (1) Mr. Anderson removed the brushes from the generator brush holders. (2) He was not certain he accounted for all brushes removed. (3) The loose brush was found on the "commutator." (4) The loose brush left on the "commutator" by Mr. Anderson resulted in failure of Diesel 605 on January 22, 1945. (5) Mr. Anderson testified he did not doubt the statement of Messrs. Logan and Williams and clearly admitted it was an oversight on his part in not removing the extra brush which caused the failure of Engine 605. (6) In addition, Mr. Anderson's representative, Mr. Hanne, stated:

"There was no malice intent in leaving this brush on the top of the "commutator", it was just an oversight. He realizes the damage he has caused and accepts the responsibility. We feel that due to his years of service we can reasonably ask for leniency."

The claim made by the employees here is unjust dismissal and pay for time lost.

Rule 33 of the current labor agreement under which Mr. Anderson was working at the time of his dismissal provides:

"If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

We feel the evidence in this case is conclusive that Mr. Anderson's dismissal was just in accordance with the facts; therefore, under that part of Rule 33 quoted there is no basis on which the carrier can reinstate the men and pay him for wage loss. Your Board has stated on many occasions that it will not disturb the carrier actions where the carrier did not act unjustly, unreasonably or arbitrarily. Since the record is so clear in this case as to this man's responsibility, the claim should be denied.

In conclusion, we would like to call the Board's attention to the fact that in conference on April 30, 1945, as a matter of leniency only, we offered to return Mr. Anderson to service as an electrician helper with his original helper's seniority with the thought that perhaps with more experience as a helper opportunity might later present itself for again upgrading him to an electrician position, but the representative of the employees on May 23, 1945, declined to accept our offer.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Some discipline was warranted in this case but the penalty imposed of dismissal was unreasonable and unjustified. Under the circumstances the claimant should be reinstated in service with seniority rights unimpaired but without compensation for time lost.

AWARD

Claim sustained as above indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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Dated at Chicago, Illinois, this 15th day of March, 1946.