

Award No. 1158

Docket No. 1093

2-LV-MA-'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. 96, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist Amerigo F. Mangialardo was unjustly deprived of his service rights on September 5, 6, 7 and 8, 1945, and that accordingly the carrier be ordered to compensate him for all such time lost.

EMPLOYEES' STATEMENT OF FACTS: Mr. Amerigo F. Mangialardo, hereinafter referred to as the claimant, was regularly employed as a machinist at Sayre, Pennsylvania, back shop, from 7 A. M. to 3:30 P. M., with a seniority date as such of September 28, 1936. This claimant also served his apprenticeship at this shop, and at the time this dispute arose he was a member of the duly authorized local committee of machinists.

Between 3 and 3:30 P. M. on Tuesday, September 4, 1945, Shop Superintendent Lehr served written notice upon the claimant that he was held out of service pending investigation, which would be held at 10 A. M., Saturday, September 8, 1945, copy of which is submitted and identified as Exhibit A. This action of the shop superintendent was protested as improper on Wednesday, September 5, 1945, by Local Chairman Lynch, a copy of which is submitted and identified as Exhibit B. The shop superintendent refused to give any consideration to the position of the chairman of the duly authorized local committee of the machinists.

The investigation was held, as ordered by the shop superintendent, at 10 A. M. Saturday, September 8, and after same had been concluded the claimant was restored to service on Monday, September 10, 1945, by orders of Mr. Lehr, shop superintendent.

The agreement dated November 1, 1942, is controlling.

POSITION OF EMPLOYEES: It is submitted that within the purpose of the use of the words "proper cases" in Rule 37, this claimant committed no offense between 3 P. M. and 3:30 P. M. on Tuesday, September 4, which could be consistently or soundly considered by reasonable men as constituting a "proper" case for suspension of a committeeman pending a hearing. This is affirmed by the submitted copy of letter addressed to the assistant to general manager by the undersigned, dated February 7, identified as Exhibit C.

and the question of discipline in a shop of this character is an important one, both from the standpoint of the men and the management. This case assumed a serious aspect after Mangialardo refused to do as he was instructed. In a case of insubordination, it is necessary for management to take immediate action and, in view of the seriousness of such a question, Mangialardo was notified of charges preferred against him the date of the occurrence, September 4, 1945, and that hearing would be held on September 8.

Suspension in proper cases pending a hearing is not a violation of Rule 37—that's what the rule says and means. We say this was a proper case in which to suspend a man, and in so doing, no violation of rule was involved. The investigation was held promptly, as this employe was notified before leaving the shop on September 4 of investigation to be held on September 8. This gave him reasonable opportunity to secure presence of necessary witnesses, if he so desired.

At the investigation, September 8, every opportunity was given Mangialardo and his representatives to present the facts from their point of view, but there was a very resentful and evasive attitude displayed by Mangialardo, which is evidenced by the statement obtained. So this Board may have the opportunity of reviewing this statement, copy of same is submitted. It will be noted the investigator took considerable effort to get straight-forward answers to questions concerning the charges in this case, and the employe's evasiveness and refusal to answer fair questions to determine the facts. The contention of employes that Mangialardo did not receive a fair hearing is not supported by the record.

After the investigation on September 8, Mangialardo was instructed to report for work on the next working day of his position, September 10, pending decision of discipline consideration of his case.

The action of the carrier in suspending Machinist Mangialardo pending a hearing on charges properly preferred was an action strictly in accordance with the rules of the controlling agreement, and was not capricious, arbitrary or discriminatory. The subsequent discipline imposed in this case voids any claim for wage loss sustained during the period of suspension pending investigation and decision.

The claim in this case is not supported by the rules of the controlling agreement, and should 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.

The claimant here is the same employe whose dismissal from the service of the carrier was before us in Docket 1094 and whose claim for reinstatement we sustained in Award 1157. Pending a hearing on charges of insubordination, of failure to perform his work properly, and of quitting work before regular quitting time he was suspended from his duties. He now claims to be compensated for time lost because of what he alleges was a wrongful suspension.

It is unnecessary to decide whether our decision in Docket 1094, Award 1157, should govern this case; for suspension in a proper case pending hear-

ing is permitted by Rule 37. The issue here is, was this a proper case for such suspension. On the facts here before us we must hold that this was not "a proper case" as those words are used in Rule 37 to justify the suspension of this employe.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1946.