

Award No. 1189

Docket No. 1116

2-SP(PL)-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—(CARMEN)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYEES: That Car Inspector J. J. Hedrick has been unjustifiably deprived of his service rights for too long a period of time, and accordingly the carrier be ordered to now reinstate him to all service rights to pay for all time lost since August 23, 1946.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed J. J. Hedrick, hereinafter referred to as the claimant, as a car inspector at Tracy, California, on August 9, 1926, and he remained in the service as such until June 30, 1944, or for approximately eighteen (18) years.

The claimant, at 3 P. M., the close of his shift on June 30, 1944, was removed from the service, and on July 21, 1944, he was discharged from the service by the carrier for having entered into an altercation with Car Inspector A. J. Hancock, at about 7:30 A. M., Friday, June 30, 1944.

At that time the claimant's regularly assigned hours were from 7 A. M. to 3 P. M., the same as the hours of assignment of Car Inspector Hancock. However, the claimant was called to work at 3 A. M., Friday, June 30, 1944, and had already worked four (4) hours overtime continuously in advance of his regular shift, in addition to working his regular shift, or twelve (12) hours on that date, or seven and one-half (7½) hours after the altercation with Car Inspector Hancock. At the time of this occurrence the claimant was, and had been for a long period of time, chairman of the carmen's local committee, and on that morning he had held a conference with Car Foreman Wilson in the car inspector's shanty, which was concluded about 7:10 A. M.

The reinstatement of this claimant has been handled in accordance with the controlling agreement, effective April 16, 1942, up to and including the highest designated carrier officer to whom such matters are subject to appeal, and who, on more than one occasion, has declined to adjust this dispute, as well as having refused to submit the case to this Division jointly. This is affirmed by copies of the letters submitted identified as Exhibits A and B, respectively, dated September 13 and 18, 1946.

POSITION OF EMPLOYEES: It is submitted that the carrier, in Exhibit B, as well as in all previous decisions made by subordinate officers thereof,

CONCLUSION

Having conclusively established that the claim in this docket was not presented or progressed in accordance with controlling provisions of the current agreement, the carrier respectfully submits that it should be dismissed.

If, however, the Board elects not to dismiss same, the carrier then respectfully requests that the claim be denied on the showing it has made that the claim in its entirety is without merit. *

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.

This employe was guilty of having an altercation with another employe. The altercation in this case was the result of discussions or arguments concerning working conditions, or proposed changes in working conditions—the employe here involved being the representative of the craft or class to handle disputes.

The Board finds from the evidence that the discipline of dismissal was not justified—it being too severe in this case. The employes attempted to handle it on a leniency basis. The Board feels from all the evidence adduced in the written presentation and at the oral hearing, that the attitude of Mr. Hedrick has been changed to the extent that he will prove to be a good employe, and that he regrets the incident happened. However, some discipline in a case of this nature is justified.

AWARD

That Mr. Hedrick be reinstated in the service of the carrier with seniority unimpaired but without pay for the time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1947.