

Award No. 1194

Docket No. 1098

2-FEC-FT-'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. 69, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (FEDERATED TRADES)**

FLORIDA EAST COAST RAILWAY COMPANY

(Scott M. Loftin and John W. Martin, Trustees)

DISPUTE: CLAIM OF EMPLOYEES: That discipline by demerit marks is improper under the current agreement, and that accordingly the carrier be ordered to clear the service record of Motor Car Maintainer W. H. Hunter of said demerits assessed against him on January 5, 1946.

EMPLOYEES' STATEMENT OF FACTS: W. H. Hunter is now and has been employed by the carrier as a motor car maintainer, under the jurisdiction of the maintenance of way engineer, since about October, 1944.

On January 5, 1946, the carrier elected to discipline Motor Car Maintainer W. H. Hunter by having assessed against his record 30 demerits, with the result that the highest designated carrier officer to whom such matters are subject to appeal has declined on more than one occasion to adjust this dispute.

The agreement dated effective November 19, 1935, with revisions and supplements effective as shown therein, is controlling.

POSITION OF EMPLOYEES: It is submitted as a fact that there is nothing any where in Rule 29, reading—

“No employe shall be disciplined without a fair hearing by a designated officer of the Railway. Suspension, in proper cases, pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe will be appraised of the precise charge against him. The employe shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to representation of his own choosing.

If it has been found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and compensated for wage loss, if any, resulting from said suspension or dismissal. An employe who has been in the service of the Railway thirty (30) days shall not be dismissed for incompetency without an investigation.”

over a period of twelve years, and that the claim of System Federation No. 69 should, therefore, be declined.

9. Up to June 18, 1946, Motor Car Maintainer Hunter had maintained a clear record of six months, and consequently five of the thirty demerits assessed against his record in this case were cancelled as of that date. (See carrier's Exhibit A.)

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.

There is no question in this case as to the right of the carrier to discipline employes. That right is conceded in the negotiated rule covering discipline. The main question is, what is the meaning of the term "discipline" as used in the rule, or what form of discipline is comprehended by the rule.

The carrier had in effect a system of discipline which they contend is not in conflict with the discipline rule. The employes contend that this system of discipline is not provided for in the rule.

The discipline rule in the current agreement reads in part as follows:

"No employe shall be disciplined without a fair hearing * * *."

It is clear from the contentions made by the respective parties that they do not have a mutual understanding as to what is meant by the term "discipline" as used in the rule.

There is not sufficient evidence from the parties in this submission to permit this Division to intelligently interpret the rule in question as presented in this dispute.

AWARD

Case remanded in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1947.