

Award No. 1219
Docket No. 1163
2-Kenn. Copper-MA-'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. 155. RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (MACHINISTS)**

**KENNECOTT COPPER CORPORATION—UTAH COPPER
DIVISION**

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement Machinist Helper D. S. Rydalch was unjustly dismissed from the service on October 17, 1945, and that accordingly the carrier be ordered to reinstate him to all service rights with pay for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: D. S. Rydalch first entered the service of the Kennecott Copper Corporation, Utah Copper Division, on March 27, 1943, in the mills at the Arthur Plant and subsequently transferred to the roundhouse at Magna, Utah, on February 11, 1944, as a machinist helper. His regularly assigned hours of service were from 4:00 P. M. to 12:00 midnight on the basis of 48 hours per week.

On the afternoon of October 17, 1945, on his way to the roundhouse, D. S. Rydalch stopped in at the office of master mechanic and confronted Mr. A. J. Fitzgerald with a request for a five (5) day leave of absence. He was immediately informed by the master mechanic that he would "see about it and let him know." Thereupon, he proceeded to the roundhouse and changed into his work clothes.

Shortly after the start of his regular shift, Enginehouse Foreman, W. F. Harris, informed him that the master mechanic wanted to see him at the office. On reporting, he was told that his services were being terminated at once on the account of coming on the job under the influence of liquor.

The controlling agreement is effective June 1, 1944.

POSITION OF EMPLOYEES: The employes desire to preface their contentions by pointing out that Rule 30 incorporated in the agreement of June 1, 1944, between the Kennecott Copper Corporation, Utah Copper Division, and System Federation No. 155 of the Railway Employees' Department, specifically provides where disciplinary measures are to be applied that:

"No employe shall be disciplined or discharged without a fair hearing by designated officer of the company. Suspension in proper

in his behalf in handling the alleged grievance. (Exhibit 7). Employer was so advised not earlier than November 9, 1945. (Exhibit 8). No further action was taken by union until August 28, 1946. (Exhibit 9).

Rule 30 of the agreement has no application whatever; this for the simple reason that D. S. Rydalch quit and could not thereafter be discharged.

Rydalch, after having quit, was advised that he had been discharged. He could not assume that he had been suspended pending a hearing and according to Rule 28, he was bound to present a grievance, if any he had, within ten days. But twenty-three days elapsed before employer was notified of the existence of an alleged grievance and more than nine months elapsed before the matter was taken to an official higher than the master mechanic. Having failed to comply with the express grievance procedure of the agreement his claim is barred.

Conclusion.

The claim of D. S. Rydalch should be denied in its entirety.

EXHIBIT 5

Triplicate

The Industrial Commission of Utah
DEPARTMENT OF EMPLOYMENT SECURITY
P. O. Box 2100 Salt Lake City 13, Utah
Read Instructions on Reverse Side Carefully!

SEPARATION NOTICE

Worker's Name—Daniel Spalding Rydalch
Social Security Account Number—528-03-1767
Period of Last Employment from 3-27-43 to 10-17 45.

Reason for separation: (Check whether voluntary or involuntary and explain in detail in the space provided below.)

(a) Voluntary (b) Involuntary Discharged: On job under the influence of liquor.

IMPORTANT: If this report is not received within three days after the employee's separation the employer will waive his right to notification with respect to a claim for benefits and it will be conclusively presumed that the employer has waived all rights to claim ineligibility or disqualification for benefits.

Employer's Name—Utah Copper Company
Address—Magna, Utah
Certified Correct by W. J. Hicks
Title—Employment Director
Date Signed—10-17-45

This form to be used only when worker may be ineligible or disqualified from benefits.

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 question in this case hinges on whether Rydalch quit (resigned) or was discharged (dismissed).

The evidence from official records made by the carrier shows Rydalch was discharged without being given a hearing under the provisions of the rules of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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