

Award No. 1225
Docket No. 1142
2-Erie-MA-'48

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. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (MACHINISTS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist Helper Roy Woodworth was unjustly deprived of his service rights for five days, effective November 5, 1946, under the current agreement, and that accordingly the carrier be ordered to reimburse him for all time lost during this said period of five days.

EMPLOYEES' STATEMENT OF FACTS: At Hornell, New York, the carrier employed Machinist Helper Roy Woodworth, hereinafter referred to as the claimant, on the first shift. On November 1, 1946, at about 9:45 A.M. Mr. C. K. James, assistant superintendent of motive power, observed the claimant at his automobile, parked about 75 feet from where he was working that morning, making an examination of the radiator to see if it was leaking. Mr. James requested the claimant's name and for whom he worked. At about 1:30 P.M. on November 2, 1946, the shop superintendent called upon the claimant to stand investigation for having been away from his job the morning of November 1, and a copy of said investigation is submitted and identified as Exhibit A.

At about 2 P.M. on November 4, 1946, General Foreman Maloney verbally advised the claimant that he would have to start serving five days suspension, effective November 5, 1946, which is affirmed by copy of letter dated April 5, 1947, addressed to the undersigned by Claimant Woodworth, and identified as Exhibit B.

This grievance has been handled in accordance with the current collective agreement up to and with the highest designated carrier officer to whom such matters are subject to appeal with the result that such officer has declined to adjust it, and same is substantiated by the copies of letters submitted and identified as Exhibits C and C-1, dated April 19 and April 29, 1947, respectively.

POSITION OF EMPLOYEES: It is submitted that this claimant was unjustly suspended from the service for five days, clearly inconsistent with the collective agreement, particularly Rule 27 (e), reading:

"No employe shall be disciplined without a fair hearing by designated officer of the Railroad. Suspension in proper cases, pending a

We feel that the record is clear that Woodworth was detected absenting himself from his position in the shop without proper permission. He did not deny the charge. He had representatives present at the hearing on November 2, 1946, and these representatives, as well as Woodworth, agreed that the investigation had been fair and impartial.

In the progress of the case the general chairman made no denial of the charge. He contended that:

1. The measure of discipline was too severe
2. Woodworth should have only a suspended sentence for his act
3. Woodworth be paid the five days suspended from work

After the rules are fully complied with, it is entirely the responsibility of management to determine measure of discipline. In this case we feel that the discipline was not excessive or unreasonable.

There is no merit in the request pending, and claim for five days' pay should be denied by the Second Division because:

1. There has been no showing by the Union that there was any violation of the rules respecting procedure in discipline cases as contained in the agreement August 1, 1942.

2. The claimant, Woodworth, and his representatives, Messrs. Stone and Smith, during the hearing November 2, 1946, admitted that the investigation had been conducted in a fair and impartial manner and according to the requirements of the agreement August 1, 1942. (See Exhibit B)

3. There is no showing that any carrier's representative handling this case acted unfairly or that Woodworth was unreasonably treated.

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 waived right of appearance at hearing thereon.

Discipline by suspension in this case to an employe of long service seems severe under the circumstances cited in the record, yet the employe absented himself from the shops without permission and was subject to some disciplinary action. It cannot be here found that the five days suspension was so unjust or so clearly wrong as to justify a nullification of the discipline.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of January, 1948.