

Award No. 1228
Docket No. 1158
2-T&P-CM-'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. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (CARMEN)

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That Locomotive Carpenter A. H. Davis was both unjustly suspended and discharged from the service on February 9 and 14, 1947, respectively, under the current collective agreement.

2—That accordingly the carrier be ordered to reinstate the aforesaid employe with his seniority rights unimpaired, and compensate him for the wage loss retroactive to February 9, 1947.

EMPLOYES' STATEMENT OF FACTS: Locomotive Carpenter A. H. Davis, hereinafter referred to as the claimant, was employed by the carrier at Lancaster shop, Fort Worth, Texas, on the 3:30 P. M. to 11:30 P. M. shift, with a seniority date of 5-18-42.

It was previously known to the claimant that his son was ill at Dallas, Texas, about 35 miles from Fort Worth, and at about 1 P. M. Saturday, February 8, 1947, the claimant was again called to come to the bed-side of his seriously ill son; and on this occasion the son's condition was such that the father did not deem it advisable to leave him until improvements in his condition developed. However, due to improvements in the condition of his son, the claimant did return to Fort Worth Sunday morning, February 9, and promptly attempted to report the cause of his absence to his foreman at about 11:30 A. M., when the foreman advised him he was pulled out of service pending investigation. This is substantiated by the copy submitted of letter dated February 10, addressed to the claimant by E. E. Long, master mechanic, identified as Exhibit 1.

The claimant's investigation, as scheduled in Exhibit 1, was held, and a copy of the transcript record of that investigation is submitted, and identified as Exhibit 2. Subsequent to this investigation, which was held on February 12, 1947, the claimant was advised that he was dismissed from the service, and this is affirmed by copy of letter submitted dated February 14, 1947, from the master mechanic to the claimant, identified as Exhibit 3.

The decision of the master mechanic, set forth in Exhibit 3, has been appealed in accordance with the current collective agreement, effective April 1, 1943, as subsequently amended, to the next highest officers, Mr. Dix, the mechanical superintendent, on February 24, and then to Mr. James, assistant

any other compensated service during the period involved. Where settlements of claims were made for lost service involving shop craft employes on this property, the method of deducting earnings made elsewhere has been followed, as was the case in the claim covered by your Board's Docket No. 3, Award 18. The claimant in that case having earned \$1700 in other service, that amount was deducted from the amount paid him as time lost. In this respect, attention is also called to your Board's Award 825 and 1180 ruling that any earnings in other employment will be deducted in arriving at time lost.

In the case at issue, however, as previously pointed out, we feel that your Board should dismiss the case as it has done in numerous other similar instances to which we have called attention, account not handled on the property in line with the agreement.

Further, if the merits are to be considered, the decision of the carrier should not be reversed by your Board as it is shown that the claimant was guilty of the charge for which dismissed—as has been ruled by the Board in many other similar instances.

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 Division has decided that it has jurisdiction of the dispute as set forth in the claim. The case on its merits is not here passed upon by the Division, but is remanded to the parties in order that they may make every effort to settle it on its merits.

In view of the circumstances as outlined in the record, the assistant master mechanic having conducted the investigation and the master mechanic having rendered a decision, it is not deemed necessary for the case to now be taken up with the foreman and/or general foreman. The case is remanded to the parties in order that the mechanical superintendent may consider the case on its merits and with the understanding that if not disposed of it shall be taken up with assistant vice president and then if not disposed of it shall be returned to this Division where an award will be rendered on the merits of the claim.

AWARD

Claim remanded in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1948.