

Award No. 1247
Docket No. 1193
2-AT&SF-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (EASTERN LINES)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Car Inspector Bennie B. Wold was:

- (a) Unjustly denied the benefit of the testimony of two witnesses at hearing held on June 13, 1947.
- (b) Unjustly dismissed from the service effective at the close of his shift on July 2, 1947.

2. That accordingly the carrier be ordered to reinstate this employe in the service with seniority unimpaired and with pay for all time lost subsequent to July 2, 1947.

EMPLOYEES' STATEMENT OF FACTS: Bennie B. Wold, hereinafter referred to as the claimant, entered the service of the carrier at Corwith, Illinois, as a car cleaner, February 11, 1931. He was subsequently assigned as carman helper, car repairer, car inspector and then as air brake inspector, on which assignment he was working from 7:30 A. M. to 3:30 P. M., July 2, 1947.

Under date of June 11, 1947, the claimant was notified to appear for an investigation at 2 P.M. on June 13, 1947, and copy of said notification is submitted, identified as Exhibit A.

Investigation was conducted June 13, 1947, by Master Mechanic Price and a copy of the investigation record is submitted and identified as Exhibit B.

On July 2, 1947, the claimant was notified by Master Mechanic Price that he was removed from service at the close of his shift that day, and a copy of said notice is submitted and identified as Exhibit C.

This dispute has been handled in accordance with the provisions of the current agreement, effective August 1, 1945, with the highest designated carrier officer to whom such matters are subject to appeal, with the result that this officer has declined to adjust the dispute.

POSITION OF EMPLOYEES: It is submitted that consistent with the words "unjustly dealt with", as used in Rule 33 (a), the claimant was unjustly dealt with in accordance with the purpose and intent of "formal investigation" referred to in Rule 33 (d), when the master mechanic refused the

the Aurora and Elgin Railroad station from his home in order to take advantage of that railroad's means of transportation to Chicago. The investigation notes further indicate that this man had made his home at Wheaton, presumably in the same location, for a period of three years. The fact that he was able to report for work at the regular starting time during most of this period should be evidence that it was not impossible for him to report for work at the regular starting time, and that his failure to do so on so many occasions during the months of May and June, 1947, which he was apparently unwilling to adequately explain, carries with it the settled conviction that this man was not unjustly dismissed from the service.

The organization's claim for reparation on behalf of the claimant employee reads:

"2. That accordingly the Carrier be ordered to reinstate the employee in the service with seniority unimpaired and with pay for all time lost subsequent to July 2, 1947."

The carrier has shown that Mr. Wold, the claimant employee, was not unjustly denied the benefit of the testimony of two witnesses at the hearing held on June 13, 1947, and that the carrier has not unjustly dismissed this man from its service.

It is a well recognized fact that no organization can function efficiently without at least a measure of discipline.

The claimant employee had been shown every consideration and his immediate supervisors had been more lenient with him than the circumstances would seem to justify. He freely admitted his guilt. His representative did not deny his guilt.

The organization apparently seeks the reinstatement of this man with pay for all time lost because the employee was denied the privilege of calling in witnesses who were not on the carrier's property at the time request was made for their presence and who could not have refuted in any measure the charge brought against this man for failing to report for work at the regular starting time.

The carrier feeling that the dismissal of this man might bring him to realize his shortcomings, and having no wish to do more than maintain a satisfactory standard of discipline, offered to reinstate the claimant employee on a leniency basis, which the organization refused to accept.

In closing, the carrier wishes to reaffirm that the allegation of the organization that this man was unjustly dismissed from the service of the carrier is absolutely without foundation and is of the opinion that your Honorable Board can have no other recourse than to deny this claim in its entirety. Further, the instant dispute is clearly without merit or schedule support and must be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

After a review of the record, and without prejudice to the position of either party in other or future cases, the Division holds that Car Inspector

Bennie B. Wold should be reinstated with seniority rights unimpaired, but without pay for time lost.

AWARD.

Car Inspector Bennie B. Wold shall be reinstated with seniority rights unimpaired. Claim for compensation dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1948.