

Award No. 1265

Docket No. 1190

2-K&IT-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE KENTUCKY AND INDIANA TERMINAL
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: 1—That the suspension from the service of Carman Helper J. J. Weisenberger, beginning at 7 A.M. on August 22 and ending at 3:30 P.M. on September 4, 1947, without a hearing, was not authorized by the current agreement.

2—That accordingly the carrier be ordered to reimburse this employe for all the aforesaid time lost.

EMPLOYES' STATEMENT OF FACTS: Carman Helper J. J. Weisenberger, hereinafter referred to as the claimant, was employed as such by the carrier at Louisville, Kentucky, during the hours of 7 A.M. to 3:30 P.M., with a seniority date of August 21, 1942, on the carmen helpers' seniority roster.

The claimant upon reporting for duty at 7 A.M. on August 23, 1947, was not permitted to resume work by the shop track foreman, because he did not work his assigned hours on August 22. This shop track foreman thereupon sent the claimant to the general car foreman, and this officer, Mr. Prosser, also declined to permit this claimant to resume work. This is substantiated by copy of the submitted transcript statement made by the claimant upon having been interrogated by the undersigned, dated August 29, 1947, identified as Exhibit A.

On September 3, 1947, the claimant was authorized by Mr. Prosser, general car foreman, to report for work at 7 A.M. on September 5, and this is substantiated by the submitted copy of letter addressed to the claimant by Mr. Prosser, identified as Exhibit B.

The agreement effective August 1, 1943 is controlling.

POSITION OF EMPLOYES: It is submitted that there is nothing expressed or implied in Rule 30 of the aforesaid controlling agreement, in applicable part reading—

"No employee shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a viola-

handed." Employee Weisenberger's personal record reveals that he failed to protect his assignment account oversleeping on two previous occasions, namely, May 21 and July 10, 1947. The same was true of Wells. For failure to protect his assignment on those two occasions, Weisenberger was not suspended or dismissed from the service but was cautioned and given leniency consideration by his foreman. The foreman, having personal knowledge that Weisenberger had failed to protect his assignment on three separate occasions within six months, suspended him prior to investigation. Certainly, such continued disregard for fulfilling his obligations after promises of reform was sufficient grounds for immediate suspension.

The discipline assessed Employee Weisenberger was comparable to that in the Wells case. The discipline assessed was not capricious, unwarranted or arbitrary. Employee Weisenberger was duty bound (Rule 17) to protect his assignment on Friday, August 22, 1946, yet he failed intentionally to report for work or notify his foreman of his inability to protect his assignment.

Carrier avers that it is inherent in the contract of employment that an employe shall protect his assignment unless he has asked for and has been granted permission to lay off. Employee Weisenberger had not, of course, asked to lay off, and so stated, accepting full responsibility for his failure so to do.

CONCLUSION.

In view of the evidence revealing Employee Weisenberger's failure to protect his assignment without good cause on August 22, 1947, and his personal record showing repetitions of offenses of the same nature within a span of six months, carrier is of opinion that it did not act unreasonably or unfair by declining organization's request to pay Employee Weisenberger for the period suspended, and urges the Board not to disturb the discipline administered.

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.

Carrier disciplined claimant by suspending him during the period from August 23, 1947, to September 4, 1947, inclusive. This discipline was based on the fact that claimant failed to protect his assignment on August 22, 1947. Claimant admitted that his failure to protect his assignment on August 22, 1947, was due to the fact that he overslept. However, this discipline was imposed by the carrier without a hearing. It seeks to justify its action on the basis of the claimant having waived an investigation.

Rule 30 of the current agreement provides: "No employee shall be disciplined without a fair hearing by designated officer of the carrier." It was the carrier's duty to carry out the rules of the agreement and a failure to do so is a violation thereof. It cannot avoid doing so by entering into agreements with individual employes for a waiver thereof for employes cannot waive the rights that have been obtained for them in collective bargaining agreements under which they work. This must, of necessity, be true if such agreements are to have any force and be effective for to permit such to be done would, in fact, destroy the very purpose for which such agreements are entered into.

As corrected, that is, to cover the period from August 23, 1947, to September 4, 1947, the claim is sustained.

AWARD

Claim, as corrected, sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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