

Award No. 1289

Docket No. 1208

2-KCT-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the carrier unjustly terminated over ten years of service rights of Car Inspector J. L. Stucker, effective at 4 P. M., December 2nd, and ending at 4 P. M. on December 10, 1947.

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

EMPLOYES' STATEMENT OF FACTS: J. L. Stucker, hereinafter referred to as the claimant, has been employed by the carrier as a car inspector at Kansas City, Missouri since August 28, 1937 and his regularly assigned hours were from 4:00 P. M. to 12:00 Midnight when he was removed from the service at the close of his shift on December 1, 1947.

On December 2, 1947, the claimant received formal notice from General Supervisor W. J. Dawson of the termination of his services due to unsatisfactory performance of the duties of his assignment, a copy of which notice is submitted and identified as Exhibit A.

On December 2, 1947, the undersigned requested a conference with General Supervisor Dawson in regard to the termination of the services of the claimant, and a copy of the request is submitted and identified as Exhibit B.

In the conference between the undersigned and General Supervisor Dawson, with the claimant present, Mr. Dawson was advised that the claimant had not received the letter referred to in Exhibit A, and a hearing was requested on behalf of the claimant.

On December 10, 1947, claimant received formal notice from General Supervisor Dawson that a hearing in regard to the charges against him would be held at 1:00 P. M. that day, and a copy of said notice is submitted and identified as Exhibit C. Accompanying formal notice from Mr. Dawson was a copy of letter referred to in Exhibit A, and a copy is submitted and identified as Exhibit D.

Formal hearing, the proceedings of which were not recorded, was held as scheduled. During the hearing it was discovered that the letter referred to in Exhibit A was never mailed to the claimant, and this is affirmed by statement of the claimant and his representatives, a copy of which is submitted

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.

Although Rule 28 grants the carrier the right to suspend or discharge prior to a hearing, the carrier did attempt to hold an investigation before taking disciplinary action against Stucker. The carrier restored Stucker to service after the investigation held on December 10th. There is no valid reason to dispute the correctness of that decision. It is reasonable to believe that the same disposition would have been made had the hearing been held, as originally scheduled, on December 1st, and under those circumstances, Stucker would not have suffered any wage loss. It was not clearly shown that the reinstatement was on a leniency basis or that any penalty was assessed. The non-delivery of the letter notifying him of the hearing to be held on December 1st, excuses his failure to appear at that time. The evidence is insufficient to support a finding that at or after the hearing on December 10th, Stucker either requested or agreed that he be restored to service on a leniency basis.

AWARD

That J. L. Stucker's service rights were unjustly terminated during the period from December 2 to December 9, 1947, both dates inclusive, and the carrier shall remunerate him for all time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1949.