

Award No. 1335
Docket No. 1249
2-C&WC-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 60, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)

CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Car Repairer E. D. Young was unjustly suspended from the service for fifteen (15) days beginning with June 7, 1947, and that accordingly the carrier be ordered to compensate this employe for all time lost in the amount of \$10.48 per day, or \$157.20.

EMPLOYEES' STATEMENT OF FACTS: E. D. Young was first employed by the Charleston & Western Carolina Railway Company at Augusta, Ga., as car repairer helper, 4-9-43. He was upgraded to mechanic, 2-24-47, under special memorandum of agreement negotiated to relieve the acute shortage of mechanics.

While working in this capacity, the home in which Car Repairer Young, his wife, and small children were living as tenants was placed on the market for sale; and Young was notified to prepare to vacate the property. Accordingly, on Thursday morning, May 1, 1947, he reported at the shop prior to 7:30 A. M., commencing time for the first shift employes, and reported the circumstances to his immediate foreman, Mr. M. H. Gaissert, and requested to be off duty until 10:30 A. M. for the express purpose of making necessary arrangements for living quarters.

Finding suitable available living quarters proved to be more difficult than was first expected, and in the end Young was forced to purchase the house which he was then occupying as renter, or be evicted along with his wife and family with no place to live.

Naturally, Young did not complete the necessary detail tasks developing or growing out of the purchase of a home by 10:30 A. M., Thursday morning, neither did he report back for duty at the shop as originally intending, nor did he report at any time that day. On Friday morning, however, according to evidence developed in the investigation, he called the car foreman's office but failed to get any answer. Saturday morning about 9:00 A. M., he called again, contacted Mr. Gaissert and explained his absence and advised he would be on hand for duty Monday morning.

In accordance with telephone conversation of Saturday morning, Young reported for duty as usual on Monday morning. However, four days later,

when a five-minute attempt proved unsuccessful, he thereafter made no further effort on that date. Carrier calls attention to the fact this is the self-serving testimony of Mr. Young, and it was not in any manner supported or substantiated. If it be true that Young did actually make an attempt to contact his foreman by telephone on the morning of May 2, carrier points out that it is indeed strange, if Mr. Young was at all interested in a compliance with Rule 18, that he abandoned his effort so readily, perhaps willingly. As a matter of fact, it was known to him that 7:30 was the time forces were going to work, and it would be difficult, although not impossible, to contact his foreman at that time. It would not have been impossible to contact someone else at the shop, and ask that proper notice be extended to Mr. Gaissert. Furthermore, it would have been quite simple to have made a later call, if Young was really interested in compliance with Rule 18, but all of his actions conclusively indicate otherwise. In the absence of proof that such an attempt was made by Mr. Young, carrier is constrained to comment that it believes this reported attempt was merely fictional, and invented by Mr. Young in the hope he would escape discipline.

While carrier has no reason to believe it will do so, there certainly can be no ground for the organization to contend that Young was not afforded a proper investigation. Proper notice was extended and the investigation held in accordance with the notification, at which time Young had representation of his choice, and both Young and his representative were accorded the opportunity of fully questioning any and all witnesses. It is remarkably singular that neither of them elected to do so, and in no manner protested the investigation.

It should be of interest to the members of this Board to note from carrier's Exhibit B(1) the transcript of Car Repairer Young's personal record, that this was not his first violation of Rule 18. He had previously been disciplined, on December 19, 1945, for violation of Rule 18, involving an unauthorized and unexplained absence. As possibly being indicative of his attitude toward his work, note carefully the three latest entries on his personal record transcript, and carrier's Exhibits B(2) and B(3), from which it will be observed that Car Repairer Young, after being cut off in force reduction, was later offered employment, but failed to report therefor and, as a consequence, forfeited his seniority. Bear in mind this is the same man in whose behalf argument was presented by the organization's representatives on the property, that he was "interested in his work" and extended notice of his protracted absence "as early as possible." All evidence indicates an extreme lack of interest in his work, and because of that lack of interest Mr. Young is no longer an employee of this company.

The discipline assessed Car Repairer Young, amounting to fifteen (15) days actual suspension, was, by every conceivable measure, fair and impartial and entirely consistent with his record. Bearing in mind that this was his second similar offense, in this light the discipline was, if anything, extremely light. It has many times been held, by this and other Divisions of the Adjustment Board, that the past record of an employee may properly be given full consideration in determining the measure of discipline to be imposed. Car Repairer Young's past record was not used in determination of his guilt of the offense with which he was charged, but was taken into consideration in reaching decision as to the amount of discipline to be assessed. Car Repairer Young was treated no differently than other employees, and the discipline assessed him was certainly determined in a fair and impartial manner. There is, therefore, no basis for the employees' contention that he should be reimbursed for the loss of time he suffered as a consequence of his suspension, and carrier respectfully requests the Board to deny the claim.

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.

We find nothing in this record to warrant us to substitute our judgment for that of the carrier. The carrier acted for cause and within justifiable bounds in assessing the penalty.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of August, 1949.