

Award No. 1347
Docket No. 1288
2-D&RGW-MA-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

THE DENVER & RIO GRANDE WESTERN
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1—That under the current agreement Machinist Helper J. B. Arant was unjustly suspended at 5:45 A. M. on July 8 and unjustly dismissed from the service on July 21, 1947.

2—That accordingly the carrier be ordered to reinstate this employe to all service rights with pay for all time lost since 5:45 A. M. on July 8, 1947.

EMPLOYEES' STATEMENT OF FACTS: J. B. Arant entered the service of the carrier on January 3, 1930, in the capacity as a machinist helper at Grand Junction, Colorado. His service with the carrier included that of an "upgraded" helper doing mechanics' work and he also served as a diesel-electric maintainer enroute.

At approximately 5:45 A. M. on July 8, 1947, the roundhouse foreman suspended the claimant from service allegedly for having been found asleep in the cab of engine 1132. A copy of a letter received from the master mechanic and dated July 10, 1947, confirming the action taken by the roundhouse foreman is herewith submitted and identified as Exhibit A.

The investigation was held as scheduled during the afternoon of July 16, 1947, and a copy of the transcript record thereof is submitted, identified as Exhibit B. However, subsequent to this investigation or on July 21, 1947, the carrier's General Foreman Brown advised the claimant that he was dismissed from the service, a copy of which is submitted, identified as Exhibit C.

The agreement effective September 1, 1940, as amended June 1, 1943, is controlling.

POSITION OF EMPLOYEES: It is submitted that within the provisions of Rule 31 (a) reading in pertinent part—

"Any employe subject to this agreement, believing that he has been unjustly dealt with, or any provisions of this agreement has been violated, the case shall be taken. . . ."

In addition, in paragraph 3, organization refers to Wilbur Wages being assessed 60 demerits for being found asleep. Wilbur Wages was found asleep in the inspector's shanty at Grand Junction. An investigation was scheduled to determine facts in this case. Wilbur Wages failed to appear at the investigation. As a result of this investigation Mr. Wages was dismissed from carrier's service. Later Mr. Wages appeared at the office of the master mechanic and stated that he did not appear at the investigation because he was detained at a doctor's office. The investigation was reopened and Mr. Wages admitted he had been asleep and explained that his stomach had been bothering him and he had stretched out on the floor to relieve the pain and had fallen asleep. The local committeeman asked for leniency and in view of the facts in the case leniency was granted Mr. Wages. This would in no way alter the fact that Mr. Arant was found asleep and offered no excuse for his being asleep, other than to make a self-serving denial that he was asleep, which denial was refuted by the testimony of three (3) disinterested persons that he was asleep.

The investigation in this case shows conclusively that J. B. Arant was asleep during his prescribed hours of service and at a time when he was under the pay of carrier. Carrier was compensating J. B. Arant for the performance of services, and not for sleeping. Carrier cannot approve of an employe sleeping during his assigned hours of service and your Board should not approve such conduct.

Carrier submits this claim should 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 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.

The evidence of record in this case does not justify a continuance of the discipline assessed. The claimant should be restored to service with all seniority rights without pay for time lost.

AWARD

Claim disposed of in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1949.