

Award No. 1377

Docket No. 1301

2-MP-BM-'50

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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (BOILERMAKERS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Boiler Washer William Dorch was unjustly dismissed from the service effective April 15, 1949, and that accordingly the carrier be ordered to reinstate him with all rights unimpaired and compensate him for all time lost since the aforementioned date.

EMPLOYEES' STATEMENT OF FACTS: Boiler Washer William Dorch, hereinafter referred to as the claimant, was employed by the carrier at Kansas City, Missouri, for more than twenty (20) years, and his assignment of hours as a boiler washer were from 4:00 P. M. to 12:00 Midnight.

The carrier preferred charges against the claimant on April 9, 1949, and summoned him to stand hearing, copy of which is submitted, identified as Exhibit A. It will be noted that this exhibit contains no hearing date or date of the cause for the charges.

The claimant's hearing was held on April 13, 1949, and a copy of the transcript thereof is submitted, identified as Exhibit B.

The carrier dismissed this claimant from the service on April 15, 1949, and a copy of said dismissal is submitted, identified as Exhibit C.

The agreement, effective July 1, 1936, as subsequently amended in the reprint September 1, 1946, is controlling.

POSITION OF EMPLOYEES: This dispute comes before your Division because the employe claimant has been unjustly dealt with—separated from his twenty (20) years or more employment relations with the carrier—obviously inconsistent with the letter and spirit of the collective controlling agreement and without good reason or cause on the part of the carrier. In support of this position and the statement of dispute, it is submitted as follows:

1—That the carrier adduced no competent proof in the collectively established hearing record, Exhibit B, which convicted the claimant as guilty of the charges filed against him on April 9, 1949, Exhibit A.

In Fourth Division Award No. 332, the Board, with the assistance of Referee Henry J. Tilford, denied claim for reinstatement of the claimant who had been discharged and said:

"In the absence of an agreement to the contrary, the Carrier's action in dismissing an employe will not be interfered with by the Board unless in so doing the Carrier acted arbitrarily or capriciously, provided always the employe has been accorded such a hearing or trial as the rules provide for."

In a claim for reinstatement with full seniority and other service rights and with compensation for all time lost submitted to your Board by the same organization now a party to the present dispute, in behalf of Carman T. R. Flowers, Docket No. 1256, your Board, with the assistance of Referee J. Glen Donaldson, in Award No. 1323 denied the claim in its entirety, holding as follows:

"There is undoubtedly room here for differences of opinion whether in view of claimant's past record and the circumstances of this case that outright dismissal from service was dictated. Be that as it may, it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

Again in Award No. 1121, your Board, with the assistance of Referee Sidney St. F. Thaxter, denied claim for reinstatement of Carman Guy Hess and held as follows:

"The action of the carrier in imposing the discipline it did in this case was not only not unreasonable but was fully justified."

In Third Division Award No. 2297, the Board, with the assistance of Referee Herbert B. Rudolph, denied the claim for reinstatement and held as follows:

"It is not the function of this Division to weigh the evidence in disputes of this nature. It has been repeatedly held by this Division that if there is any substantial evidence to support the charges, the findings based on this evidence will not be disturbed; if the Carrier has not acted arbitrarily, without just cause, or in bad faith, its action will not be set aside. Nor is the function of this Division to substitute its judgment for that of the Carrier in the matter of discipline. Under the facts presented we cannot say that the Carrier acted arbitrarily, without just cause, or in bad faith."

Based upon the facts contained herein, this claim should be denied as being wholly without merit, without basis in fact and without support under the rules of the effective agreement.

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.

Claimant was charged with having gone off the carrier's premises without permission. Admittedly such conduct, while on duty, is an infraction

of the rules of the parties' agreement unless a valid excuse is apparent. The evidence produced at the hearing is sufficient to sustain the findings that claimant was guilty of the charges made against him.

Claimant had served carrier as an employe for almost twenty-one years. The records indicate that his services were satisfactory during all of those years. In view thereof we think the discipline imposed was unreasonable and excessive.

We find that a reasonable imposition of discipline under the facts, as disclosed by the record, requires that claimant be reinstated with all seniority rights unimpaired but denied compensation for all time which he has lost by reason of this proceeding.

AWARD

Claim denied as to compensation for all time lost but sustained as to reinstatement with all rights of seniority unimpaired.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1950.