

Award No. 1452

Docket No. 1404

2-SP&S-BM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

THE SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Boilermaker Byron D. Green was unjustly dismissed from the service effective May 25, 1950.

2. That accordingly the carrier be ordered to restore the above boilermaker to service with seniority rights unimpaired and compensate him for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Boilermaker Byron D. Green, hereinafter referred to as the claimant, was regularly employed by the carrier at Vancouver, Washington, as such with a seniority date of July 24, 1946, and under the supervision of Boiler Foreman E. C. Cook.

Under date of June 1, 1950, the claimant visited the roundhouse to report to the general foreman of the advice given him by Doctor Johnson regarding his irritated eyes caused by welding, when he was handed a letter dated May 31, 1950, addressed to him by General Foreman E. Haney, notifying him to be present at his office at 10:00 A. M., on Thursday, June 1, 1950 for formal investigation of charges preferred against him contained in the aforementioned letter, a copy of which is submitted herewith and identified as Exhibit A. The investigation was held on June 1 and submitted herewith and identified as Exhibit B is a copy of the hearing record.

Under date of June 15, 1950, general superintendent of motive power directed a letter to the claimant, dismissing him from service of the carrier, effective May 25, 1950, a copy of which is submitted herewith and identified as Exhibit C.

This case was handled with carrier officials who declined to adjust the dispute.

The agreement effective May 1, 1934, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: The claimant last entered the service of the carrier as boilermaker at Vancouver, Washington on May 24, 1946, having previously worked for the Swan Island and Oregon Ship Yards as a boilermaker after completing his apprenticeship on the Southern Pacific

that "I thought the Company would figure on having trouble putting a new man on that flue fire."

4. He admitted that some of the destroyed flues were thrown outside the roundhouse, where they could not be inspected or seen by the foreman.
5. He admitted his inability and lack of qualifications to weld flues when he stated that "Boilermaker Helper Hutton showed me how to weld one flue."

The carrier has conclusively shown the claimant destroyed company material, with resulting monetary losses, and that he was not qualified as a first class boilermaker. It was also not possible to assign claimant to other work by reason of his seniority standing and if he could not perform service on the flue welding machine, there was no work to which he could then be assigned. It follows that the carrier's action of dismissing the claimant was not arbitrary or in bad faith, but on the contrary was necessary and proper.

Having proved the claim is without merit, the carrier is confident the Board will deny it. Notwithstanding this position, and in no way admitting the carrier's dismissal of the claimant was not justified, the carrier submits that in the event the Board should sustain the claim with consideration for time lost, such consideration must be confined to the difference between the amount the claimant would have earned in the service of the carrier from May 25, 1950 to the date of reinstatement, and the amount he earned in other employment during said period.

The difference in earnings is clearly supported by Rule 27 of the current Agreement which in part reads as follows:

"Discipline and Grievances

Rule 27 (c) * * * If it is found that an employe has been unjustly suspended or dismissed from the service, he shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, by reason of such suspension or dismissal." (Underscoring added.)

The principle of difference in earnings is sustained by many awards of the First, Second and Third Divisions, however, the carrier feels it is only necessary to direct attention to Second Division Awards Nos. 1290, 1301 and 1302, which involved reinstatement cases where a rule similar to Rule 27 (c) was in effect, and in all of these awards only the difference in earnings was allowed. In the event the Board considers the matter of compensation to claimant for time lost, the carrier feels it incumbent on the Board to follow the principle as set forth above and require that any and all earnings by the claimant during the period for which compensation is claimed be deducted.

The Carrier respectfully requests that the claim in its entirety be denied as it is not supported by the evidence.

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.

Seniority and the right to work carries with it the responsibility to perform the assigned work in accordance with the provisions of the agreement.

Considering all the facts of record in this case, the Division is of the opinion that the discipline has served its purpose and the claimant should be reinstated with all seniority rights without pay for time lost.

AWARD

Claim to be disposed of in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June, 1951.