

Award No. 1458

Docket No. 1386

2-Wab-MA- '51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist V. W. Hubbard was unjustly suspended on August 5, 1950 and discharged August 16, 1950 from the service.

2. That accordingly the carrier be ordered to restore the aforesaid machinist to service with seniority rights unimpaired and compensate him for all time lost retroactive to 10:00 A. M., August 5, 1950.

EMPLOYEES' STATEMENT OF FACTS: Machinist V. W. Hubbard, hereinafter referred to as the claimant, with seniority date of May 8, 1935, was employed as a machinist welder at the Wabash Railroad Company roundhouse, Decatur, Illinois. He was assigned to the 7:00 A. M. to 3:00 P. M. shift, with rest days of Monday and Tuesday each week. He was also a machinist committeeman.

Hubbart lives approximately two miles outside of the city limits and on his property is a large barn that he was having painted. On the morning of August 5, 1950, the painting had progressed to the point of painting the gable of the barn which is approximately thirty feet above the ground. The painter, because of his age, was afraid to paint the gable without help. Hubbart decided to stay home and paint the gable, and then report for work. He has no telephone at his home.

At approximately 9:30 A. M. General Roundhouse Foreman Crawley went to Hubbart's home and found him painting the barn and the painter holding the ladder. He told Hubbart that he had some flues to be welded before an engine could be dispatched and it was Hubbart's job to weld them.

Hubbart reported for work at 10:00 A. M. and was met at the door by Foreman Crawley and Master Mechanic Rieck. Hubbart told them he was reporting for work and the master mechanic told him he was out of service pending an investigation and to go home and finish his painting.

On August 7, 1950, the claimant received a letter directed to him by General Foreman Crawley advising him that an investigation would be held in his office at 1:30 P. M., August 9, 1950, relative to the charge by Assistant

tion of this rule. At a reasonable time prior to the hearing, such employe and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal." (Underscoring added.)

Further, without waiving and without prejudice to its position as herebefore set forth, the carrier submits that, should this Division, in total disregard of the facts in connection with this case, render a sustaining award, the carrier is, under the above quoted rule, entitled to deduct any earnings received by the claimant from other employment during the time he was out of service.

The contentions of the committee should be dismissed and the claim 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 were given due notice of hearing thereon.

Claimant is a machinist with seniority date of May 8, 1935. He was regularly assigned at the Wabash Railroad Company Roundhouse, Decatur, Illinois, 7:00 A. M. to 3:00 P. M., with Monday and Tuesday as rest days. On August 5, 1950, he failed to report for work. The general roundhouse foreman went to the home of claimant and found him engaged in personal work. He immediately thereafter went to the roundhouse to report for work and was advised that he was suspended from service for being absent from work without proper authority. An investigation was held and claimant was dismissed from the service. The claim is that claimant be returned to service with seniority rights unimpaired and that he be compensated for all time lost.

Claimant resided on a farm about two miles outside the city limits of Decatur. On the day in question he had not sought or obtained permission to be absent from work. About 9:30 A. M., the general roundhouse foreman went to claimant's home and found him engaged in painting his barn. The foreman says that claimant did not indicate if he intended to report for work but he did in fact report about 10:00 A. M. when he was advised that he was suspended from service.

Claimant says that he was engaged in painting his barn with the assistance of another employe who was on a rest day. He says that they were painting the gable and two workmen were required to get this part of the work done. Claimant admits that he did not obtain permission to be absent from work on the day in question. He contends, however, that he complied with the provisions of Rule 18 (a), current agreement, when he reported for work at 10:00 A. M. This rule provides:

"In case an employe desires to be absent from duty, he shall obtain permission from his foreman. An employe absent from work account of sickness or other good cause, shall not be discriminated against. Should he be unavoidably kept from work, he shall advise his foreman the reason therefor within eight (8) hours after the starting time of his regular shift."

Claimant clearly absented himself from his work without permission within the meaning of this rule. He was not absent because of sickness or other good cause, nor was he unavoidably kept from work within the intent of Rule 18 (a). His reporting for work at 10:00 A. M. was clearly the result of the foreman's investigation of his absence. It cannot be considered as a compliance with the notice provision of the rule for the simple reason that it applies only to employes unavoidably kept from work, which the claimant was not. Claimant violated the rule according to his own admissions. The record shows that claimant had on previous occasions absented himself from work without permission. The carrier says that he had not previously been disciplined but had received numerous admonitions. Under such circumstances we cannot say that the carrier acted arbitrarily in dismissing him from the service.

Throughout the record, the carrier has indicated a willingness to restore claimant to service without pay for time lost. Claimant has consistently refused a settlement on this basis. We must assume that his refusal was based on a misunderstanding of his agreement rights. A complete severance of his rights after 15 years of service is a severe punishment for the offense committed. We think the time claimant has been out of service constitutes adequate punishment for the offense committed and that the necessity for discipline has been accomplished. We therefore direct the carrier to return claimant to service with seniority rights unimpaired without compensation for time lost.

AWARD

Claimant restored to service with seniority unimpaired without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1951.