

Award No. 1542

Docket No. 1465

2-UR-MA-'52

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 EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

UNION RAILWAY COMPANY (Memphis, Tennessee)

DISPUTE: CLAIM OF EMPLOYEES: (a) That under provisions of Controlling Agreement, particularly Rules 1-(a) and (b), and Rules 32-(b) and (e), Machinist C. F. Rupprecht was unjustly suspended from service on September 9, 1951, and unjustly dismissed Sept. 13, 1951.

(b) That accordingly Carrier be ordered to reinstate this employe to all seniority rights unimpaired, with pay for all time lost retroactive to Sept. 9, 1951.

EMPLOYEES' STATEMENT OF FACTS: At Memphis, Tenn., carrier employe Machinist C. F. Rupprecht, hereinafter referred to as the claimant, and his employment therewith has been continuous for a period of 1-1/3 years. The carrier regularly employed the claimant as machinist with assigned hours 7:00 A. M. to 3:00 P. M., presumably Wednesday through Sunday.

The carrier suspended the claimant from service effective September 9, 1951, and on September 11, 1951, ordered him to submit himself for investigation at 2:00 P. M., Wednesday, September 12, 1951, because of having been charged with insubordination with General Foreman Cundiff, Sunday, September 9, 1951. Carrier advanced no claim of agreement rules violation. These developments are affirmed by copies of letter addressed by Master Mechanic Smith to the claimant, submitted herewith and identified as employees' Exhibit A.

The investigation of the claimant was conducted September 12, 1951 and a copy thereof including statement of witnesses is submitted herewith and identified as employees' Exhibit B.

The carrier made the election on September 13, 1951, to dismiss the claimant from service which is affirmed by notice addressed by Mr. W. E. Lamb, President, to the claimant, copy submitted and identified as employees' Exhibit C.

POSITION OF EMPLOYEES: 1. That by first suspending the claimant from service on September 9, 1951, the carrier violated provisions of Rule 32-(b).

"It is not the function of this Board to substitute its judgment for that of the Carrier in matters of discipline. See Award 2498, Docket No. PM-2243 dated March 10, 1944, Third Division. . . ."

In Third Division Award No. 2498 the board there said:

"It is not the function of this Board to substitute its judgment for that of the Carrier in matters of discipline. Discretion is vested in the Carrier in this respect and a finding will be set aside only when it is so clearly wrong as to constitute an abuse of discretion. Awards 419, 891, 1022, 2297. Not only was there no abuse of discretion, but the evidence, while conflicting, amply sustains the charge." (Underscoring ours.)

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties to this dispute on the property.

This claim should, therefore, be denied as being entirely without support under the provisions of the agreement, the awards of your Board, and is wholly without merit as a matter of equity.

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.

The Machinists of System Federation No. 2 contend Machinist C. F. Rupprecht was unjustly suspended from service on September 9, 1951, and unjustly dismissed from service on September 13, 1951. If the charges made against Rupprecht will sustain his dismissal from the service then it was proper, within the meaning of Rule 32 (b) of the parties' effective agreement, to suspend him pending a hearing.

Carrier charged Rupprecht with "insubordination with General Foreman Cundiff, Sunday, September 9th." After hearing, carrier advised claimant of his dismissal based on the fact that it found him guilty of insubordination toward his superior officer on September 9, 1951. We find the charges as made sufficiently apprized claimant of what carrier was accusing him of and that the findings respond to the evidence adduced at the hearing.

Factually, the record establishes that while claimant was making out and signing his work reports on Engines Nos. 1229 and 1502, General Roundhouse Foreman E. B. Cundiff was critical of claimant's work and told him he didn't think he had done eight hours of work. This it was proper for the supervising officer to do, as he has a right to discuss with and criticize an employe's work. In response to this criticism claimant became abusive, using violet and obscene language, and threatened the use of physical violence. He was insubordinate to his superior.

[Discipline is a necessary adjunct between employes and their superiors in order to have proper relations between them. (An employe must be obedient to the orders of his superior.) If he has complaints to make there are proper methods for doing so. See Rule 31 of the parties' effective agreement. After sixteen months of service it is apparent that claimant has much to learn in this respect. We find the dismissal fully justified by the facts shown in the record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June, 1952.