

Award No. 1561

Docket No. 1486

2-MP-FO-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Laborer Charles Evans was unjustly suspended on April 14, 1951 and unjustly dismissed from the service on April 26, 1951.

2. That accordingly the Carrier be ordered to restore the aforesaid Laborer to service with seniority rights unimpaired and paid for all time lost retroactive to April 14, 1951.

EMPLOYES' STATEMENT OF FACTS: Laborer Charles Evans, hereinafter referred to as the claimant, was employed by the carrier at its shops in Kansas City, Missouri, with a seniority date of February 10, 1948.

The claimant was suspended from service on April 14, 1951, and under date of April 16, 1951, Assistant Master Mechanic H. E. Lehnherr directed a letter to the claimant advising him to appear in the office of the assistant master mechanic at 9:00 A.M. April 18, 1951, for formal investigation on a charge which is set forth in the letter, a copy of which is submitted herewith and identified as Exhibit A. The formal investigation was held as scheduled and submitted herewith and identified as Exhibit B, is a copy of the hearing transcript. Under date of April 26, 1951, a letter was directed to the claimant by Master Mechanic E. M. Vandiver advising him he was dismissed from the service of the carrier, a copy of which is submitted herewith and identified as Exhibit C.

The agreement effective September 1, 1949, is controlling.

POSITION OF EMPLOYES: It is submitted that the investigation record does not support the carrier's charge against the claimant as nothing contained therein would justify a conclusion that the claimant was guilty of such charges because:

1. The carrier has failed to adduce proof to support the charges that the claimant was not on his job between 8:00 A.M. and 9:45 A.M. on April 14, 1951.

2. The hearing record reflects that the claimant was on the property getting his check and working on Engine 2200 between the hours of 8:00 A.M. and 9:45 A.M. therefore, it is obvious he was on his job.

much of claimant to exercise reasonable judgment and not go for his check during the short period set aside for the safety meeting.

Claimant's attitude is also demonstrated by either his total lack of knowledge or deliberate mistatement that he need not follow instructions of his foreman in assigning tasks in addition to the task which he does regularly. If claimant deliberately stated that he had only to carry out his assignment of fire knocker and do no other laborer's work when he knew better, then certainly any discipline administered could not be too severe. If, on the other hand, claimant after 3½ years was unaware of the requirements of the job, then certainly he is not a satisfactory employe.

Claimant's past record shows that he was hired February 2, 1948. He worked intermittently during 1948 according to the amount of work to which his seniority entitled him. He worked a few days in January, 1949. He then did not work again until December, 1949, but worked continuously up to the time of his discharge. During this latter period, he had eight garnishments filed against him. There is no long history of continuous employment to be considered here. His work has not been exceptional. There is no reason to be found in this record for giving claimant special consideration that would call for a reduction in the penalty assessed.

The carrier in a proper use of its discretion has found it necessary to dismiss claimant. The record does not reveal any reason for disturbing this matter of judgment. The claim must 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.

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 15th day of July, 1952.