

Award No. 1692

Docket No. 1598

2-L&N-MA-'53

**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. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist T. E. Matlock was unjustly discharged from the Carrier's service January 21, 1952.

2. That accordingly the Carrier be ordered to restore T. E. Matlock to service with all rights unimpaired and compensate him for all time lost since January 21, 1952.

EMPLOYEES' STATEMENT OF FACTS: Machinist T. E. Matlock hereinafter referred to as the claimant, was employed by the carrier 35 years ago and has served the carrier as a painter helper, machinist helper, machinist apprentice and for 26 years as a machinist. He was regularly assigned Monday through Friday, 3:00 P.M. to 11:00 P.M., at Corbin, Kentucky, January 21, 1952.

On December 20, 1951, the claimant was relieved of his duties at 8:10 P. M., and sent home. And as of December 28, 1951, the claimant was required to attend a question and answer investigation, copy of which is submitted herewith and identified as Exhibit A.

On January 21, 1952, this claimant was notified by Master Mechanic J. O. Rose, that he was dismissed from the service of the Louisville Nashville Railroad Company. Copy of dismissal notice is submitted herewith and identified as Exhibit B.

The case of this claimant has been handled with each carrier official in accordance with the existing rules, governing such matters, all of whom have declined to adjust the dispute.

The agreement of September 1, 1943, as subsequently amended, is controlling in this dispute.

POSITION OF EMPLOYEES: It is submitted that Machinist Matlock was erroneously observed as being intoxicated December 20, 1951 when he was relieved of his machinist duties and escorted from the property of the

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. 91 bring this dispute here on the ground that carrier unjustly discharged Machinist T. E. Matlock from its services on January 21, 1952. Because thereof it asks that he be restored to carrier's service with all his rights unimpaired and that carrier be required to compensate him for all time he has lost because thereof.

Carrier, as of December 21, 1951, charged Matlock with being under the influence of intoxicants while on duty on December 20, 1951, to the extent that it was necessary to relieve him from service and send him home. Hearing was held on these charges on December 28, 1951, and, from the evidence adduced thereat, carrier found Matlock guilty of the charges it had made against him. Based on such finding, it dismissed him from its services as of that date. It is from that finding, and the penalty imposed based thereon, that this appeal was taken.

While there is some conflict in the evidence adduced at the hearing as to claimant's condition and the cause thereof, we think the evidence adduced is sufficient to support carrier's finding that he was guilty of the charges it had made against him. However, the record does not show a case of extreme intoxication.

The question then remains, was the penalty imposed excessive? This and other Divisions of the Board have often said they would not substitute their judgment for that of the carrier unless its action in that respect can be said to be arbitrary, unreasonable, or unjust.

As a machinist claimant was engaged in important work for the carrier, using expensive tools and working on valuable equipment. Not only did his work immediately involve such tools and equipment, but poor workmanship could cause serious damage to other employes and other equipment. In fact, claimant's condition, if he had been left on the job might possibly have caused injury to himself, to his fellow employes, or damage to carrier's property. In this respect it should be remembered that it is carrier's duty to operate its facilities in as safe, efficient, and economical manner as possible.

It is also true that carrier, after a finding of guilt, may take into consideration the past record of the employe in determining the extent of the penalty which it may be justified in imposing. Here claimant's record shows that on May 30, 1949, he was relieved from duty because of intoxication but that no discipline was imposed because thereof.

But in this regard an employe's long record of satisfactory service with the carrier should receive serious consideration. Seniority, particularly when of many years' standing, is a very valuable right to an employe in his older years. Claimant had been in the services of this carrier for more than 35 years, the last 26 of which were as a machinist. The evidence adduced at the hearing clearly establishes that, except for these two incidents, he has always been a good worker and rendered faithful service.

Taking all of these matters into consideration, we think it is unreasonable for carrier to completely destroy claimant's seniority rights because of what happened while he was on duty on December 20, 1951. We think his

conduct justifies a severe penalty in order to make him realize the seriousness of what he did. In this regard we think if he is restored to service as of August 21, 1953, with all seniority rights unimpaired but denied any compensation for the period of 19 months that he will have then been out of service, it will provide sufficient penalty to meet the seriousness of his offense.

AWARD

Claimant restored to carrier's service as of August 21, 1953, with seniority rights unimpaired but all claims for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.