Award No. 1697
Docket No. 1594
2-OUR&D-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carman Helper Delas D. Vaughn was both unjustly suspended and dismissed from the service on September 10th and 15th, 1952 respectively.

2. That the Carrier be ordered to reinstate this employe to all service rights and to compensate him for all wages lost retroactive to 3:00 P. M., September 10th, 1952.

EMPLOYES' STATEMENT OF FACTS: Carman Helper Delas D. Vaughn, hereinafter called the claimant, has been employed by the carrier at Ogden, Utah, since July 7, 1950, and at the time of his suspension he was regularly assigned on the second shift during the hours from 3:00 P. M. to 11:00 P. M.

The claimant and Carman Helper Larry Wayman were working as partners on the second shift oiling trains at approximately 5:50 P. M. on September 9, 1952. They were granted permission to take time out, as usual, for lunch at a nearby cafe where the claimant was attacked which caused him to feel unable to resume the completion of his tour of duty.

The claimant promptly reported his inability to finish out his shift to Mr. Neal, the car foreman, at about 6:15 P. M. through his partner, Carman Helper Wayman. However, the claimant was taken to the Dee Hospital with abdominal pains which occurred after his emotional upset but upon his release without material treatment, the claimant proceeded from the hospital to his place of employment and reported to Mr. Close, assistant general car foreman, at about 7:30 P. M. to the effect that he was not able to finish out his shift that night but thought that he would be all right for working his assignment the next day.

The claimant reported for duty the next day, on September 10, 1952, with the result that he was suspended from the service pending a hearing and the next day, or September 11, the claimant was summoned by letter to appear for a formal investigation at 9:00 A. M., September 15, 1952, on the charge of having violated the carrier's Rules 701-R and 702-R, copy of which letter is submitted herewith and identified as Exhibit A.

lation of wage loss was by claimant's own choice, and his claim for compensation for time lost is without merit. He should be reinstated with seniority rights unimpaired but without pay for time lost."

Recent Award No. 15764 rendered by this Division with the assistance of Referee Edward F. Carter is of similar purport:

"The record clearly sustains the findings of the carrier that claimant used profane language towards the Assistant General Yardmaster and was guilty of insubordination in so doing. Approximately sixty days after claimant was dismissed from the service, carrier offered to reinstate claimant. This clearly eliminates any question of excessive discipline. Reinstatement without pay should have been accepted at that time. The failure to accept it eliminated any question of wage loss, it being the result of claimant's own choice. * * * "

Certainly there is ample proof that the claimant violated the rules and that the application of discipline was warranted. The carrier on October 22, 1952, offered to reinstate the claimant on that date, on a lenciency basis without pay for time lost. The organization, however, rejected reinstatement on that basis, and consequently the carrier is no longer bound by that offer.

Discipline is the duty and prerogative of management. It is for the carrier's officers, whose responsibility it is to operate the railroad safely and efficiently, to enforce the rules and to apply the necessary discipline where they are not complied with.

Under the rules laid down and steadfastly adhered to, this Board will not interfere with the carrier's right to apply discipline unless it is shown that the carrier failed to offer reasonable proof of guilt or that the carrier acted capriciously or arbitrarily in the assessment of discipline.

The carrier has adequately proven that the claimant violated Rules 701(R) and 702(R) of the "Rules and Instructions for All Departments" of The Ogden Union Railway and Depot Company on September 9, 1952. The claimant's past record, often a factor to lessen the degree of punishment, was not such in this case as to warrent favorable consideration.

It cannot be said in these circumstances that the discipline assessed was excessive, nor is there evidence that the carrier acted arbitrarily or capriciously. The carrier offered leniency, which was rejected.

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 carmen of System Federation No. 105 have taken this appeal to this Division from carrier's action suspending, and then dismissing, Carman Helper Delas D. Vaughn. It contends carrier unjustly took this action, and because of that fact, asks that we order Vaughn restored to service with all service rights unimpaired and that carrier be directed to compensate him for all wages lost since September 10, 1952.

Vaughn was employed by carrier on July 5, 1950, at Ogden, Utah as a carman helper. He was regularly employed, his shift being from 3:00 P. M. to

11:00 P. M. On September 9, 1952 he reported for work at 3:00 P. M. Sometime between 5:35 and 5:50 P. M. Car Foreman R. Neal directed him to go to lunch. Vaughn's shift was covered by the provisions of Rule 4 of the parties' agreement. This rule allowed him twenty minutes for lunch within the spread of his eight hour shift.

During this lunch period an incident occurred which resulted in Vaughn being suspended from work and the following charges being made against him:

> "You are hereby instructed to appear in my office at 9:00 A. M., Monday, Sept. 15, 1952, for formal investigation account violation Rule 701-R of the OUR&D Co. — Rules and Instructions for all Departments — * * * "

It then quotes the following from the foregoing rules:

> "Employes must not enter into altercation with any person, no matter what provocation may be given." (Rule 701-R), and,
>
> "They must not absent themselves from duty . . . without proper authority." (Rule 702-R)

Carrier may establish and enforce reasonable rules and regulations relating to the duties and conduct of its employes while they are actually serving it as long as such rules and regulations do not conflict with the provisions of the collective bargaining agreement they have with such employes or are not unlawful because against public policy.

Hearing was had on September 15, 1952. Claimant was found guilty of the charges made against him and dismissed from carrier's service.

When claimant was directed to take his lunch time by Car Foreman Neal, he, and a fellow employe Carman Helper Larry Wayman, went to eat at Louie's Cafe. This was a cafe owned and operated by claimant and his wife. While there claimant got into an argument with his wife. As a result she jabbed an ice pick into his arm. This did not result in a serious wound, but, because he was emotionally upset, he was taken to a hospital.

Before claimant went to the hospital he told Wayman to request Neal to lay him off for the balance of his shift, which Wayman did. Wayman did this sometime between 6:00 and 6:15 P. M. Claimant stayed at the hospital a very short time. There they advised him not to work if he didn't feel like it. When claimant got out of the hospital he returned to where he worked and contacted Assistant General Car Foreman Close, the only man with authority to release him from duty. This was sometime between 7:30 and 7:45 P. M. He told Close what had happened and that he did not feel able to resume his duties and complete his tour of duty. He requested Close to get off. Close advised him he had better make a formal accident report, which he did not do. It is apparent, from the foregoing, that claimant got into an altercation while at lunch and thereafter absented himself from duty without proper authority to do so. When claimant reported for work the next day he was advised he had been suspended.

Claimant seeks relief under the provisions of Rule 22 of the parties' effective agreement, contending he had, in fact, complied therewith. We do not think Rule 22 has application when an employe has already reported for work but only when, because of any of the reasons therein set forth, he is kept from doing so. Here claimant was, at the time, actually in the service of the carrier because the twenty minutes he had for lunch was actually a part of his eight-hour shift, for which he had reported at 3:00 P. M., and time for which he received pay. See Rule 4 of the parties' agreement. But even if Rule 22 had application we do not think it would relieve claimant. Cer-

tainly he was not unavoidably kept from his work nor do we think he was detained from work on account of sickness, or for any other good cause, within the purpose for which this rule is intended.

We do not think the quoted provision of Rule 701-R, when applied to employes while actually serving the carrier, is unlawful because against public policy. Nor do we find the quoted provisions of either rule unreasonable or in conflict with any cited provisions of the parties' agreement.

Claim is made that it was not proper, under the circumstances here shown, to suspend claimant pending his hearing. This covered the period from September 10 to 15, 1952, inclusive. Rule 37 of the parties' agreement provides:

> "Suspension in proper cases pending a hearing, . . . shall not be deemed a violation of this rule."

We held in Award 1261, by citing from Award 724, that:

> "It does not give to the carrier the right to suspend in every case, but limits that right to proper cases. By proper cases must be meant cases of a serious nature, not a small infraction of the rules or the current agreement."

Applying this interpretation to the situation before us we do not think the offense here charged was of such a serious nature that it was a proper case for suspension prior to the hearing. Consequently we think the claim should be allowed for this period of time but subject to the following qualification contained in the same rule:

> "If it is found that an employe has been unjustly suspended . . . from the service, such employe shall be . . . compensated for the wage loss, if any, resulting from said suspension. . ."

As already indicated, we do not think the offense here charged of a serious nature and certainly would not justify dismissal. Ordinarily, if the employe had a good service record, we think a very limited length of suspension would be all that could be justified. But claimant has a very poor service record. This carrier was entitled to consider when imposing discipline after the claimant's guilt had been determined. In view of this past service record we think claimant will have been sufficiently punished if he is now restored to carrier's service with his seniority restored. To do more than that would be unreasonable and therefore not justified.

AWARD

Claim for restoration to service, with service rights restored, sustained. Claim for compensation for all wages lost denied except for the period while suspended pending a hearing, which is sustained in accordance with our findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of August, 1953.