

Award No. 1849
Docket No. 1747
2-UP-MA-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist Charles F. Johnson of Denver was unjustly dealt with when he was deprived of his service rights on and subsequent to July 30, 1953.

2. That accordingly the Carrier be ordered to:

a) Reinstate this employe to all service rights unimpaired.

b) Compensate this employe for all wage loss retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Mr. Charles F. Johnson, hereinafter referred to as the claimant, was employed by the carrier at Denver, Colorado as a machinist apprentice on August 12, 1940; was advanced to machinist on September 2, 1943, and completed his apprenticeship as a set-up machinist on December 26, 1944, and has a seniority date as a machinist of December 27, 1944 and was in continuous service until his removal on July 30, 1953, with regularly assigned hours from 8:00 A. M. to 4:00 P. M. Monday through Friday, rest days Saturday and Sunday.

The carrier's master mechanic directed the claimant to appear for investigation and hearing at 2:00 P. M., July 21, 1953 on charges of alleged insubordination on July 17, 1953, which is affirmed by the copy of letter dated July 20, 1953, submitted herewith and identified as Exhibit A.

The hearing was held as scheduled and a copy of the transcript of the hearing is submitted herewith and identified as Exhibit B-1.

A copy of the transcript of the personal record of the Claimant is submitted herewith and identified as Exhibit B-2.

That carrier elected, through its master mechanic, to dismiss the claimant from the service of the carrier and this is affirmed by copy of letter, submitted herewith and identified as Exhibit C.

he said, 'I won't go until I finish my business here.' As far as his business there was concerned, he had none with this employee as we already had agreed on hiring this man. I told Mr. Johnson three additional times to go to engine 5027 and get the job done and each time he refused and said, 'I won't go unless you go.' Seeing that this man's intentions were not to obey instructions, I called my Sten-Clerk, Mr. Glick as a witness and again instructed Mr. Johnson to go to engine 5027 and complete his work and he still refused with the same statement, all of this time reclined or practically lying in the window. In other words, he refused at least five times to go to engine 5027 and do the work as instructed."

Johnson's insubordinate refusal to perform work as directed by his foreman were witnessed by Sten-Clerk Glick, who testified as follows:

QUESTIONS BY GENERAL CAR FOREMAN SCHROEDER
ANSWERS BY STENO-CLERK GLICK

"Q. Mr. Glick, you are the stated witness, did you hear this conversation?

A. (Mr. Glick). As I recall, Mr. Dunn did instruct him, I believe, three times while I was standing there.

Q. And you heard Mr. Johnson refuse to go do the work?

A. As I understood it, he said, 'I will go when you go.' Something to that affect. He made no attempt to go."

The record of the investigation definitely and clearly supports the charge of insubordination on Johnson's part. Separate and apart from that, however, we respectfully call the attention of this Board to the unduly long and unexplained delay on the part of the organization in progressing this claim. It will be noted that the carrier denied the claim for reinstatement with pay for time lost on October 9, 1953. Nothing further was heard from the organization until March 8, 1954, when request was made for Claimant Johnson's reinstatement on a leniency basis. This request was declined on March 23, 1954. Nothing further was heard from the organization on this matter until May 18, 1954, when President Michael Fox of the Railway Employees Department, AFofL, notified Executive Secretary Sassaman of the Second Division that the dispute over Claimant Johnson was being submitted to the Second Division.

The carrier submits that the discipline was neither unjust nor unduly severe. It respectfully requests this Board not to overrule the considered judgment of management in this case nor to absolve the claimant of his responsibility by reimbursing him for time lost as requested by the employees.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Charles F. Johnson, formerly employed as a machinist at Denver, Colorado, was charged on July 20, 1953 with having been insub-

ordinate to District Foreman R. J. Dunn, and pursuant to investigation on the property was dismissed from service under date of July 30, 1953. Organization contends that in so doing, Foreman Dunn was interfering with claimants reinstatement with service rights unimpaired, and with compensation for earnings lost.

In the course of his tour of duty on July 17, 1953, claimant stopped working on locomotive No. 5027 while waiting for his helper to secure certain necessary material. During this interval claimant proceeded to the vicinity of the office and, allegedly in his capacity as local committeeman, began interviewing a prospective or new employe whom Foreman Dunn had mentioned to claimant shortly before on the same day. During this interview Dunn approached and directed claimant to return to his work on the engine. Organization contends that in so doing, foreman Dunn was interfering with claimant's proper duties as an organization representative. Whether or not claimant was actually properly performing these duties at the time is not controlling, since under the circumstances he should have complied with the foreman's request and utilized the established procedure for resolving such disputes if he felt aggrieved. Claimant also denies, however, that he did in fact refuse to obey Foreman Dunn.

The evidence supports the charge of insubordination in that claimant did refuse to promptly obey the foreman's instructions. It follows that discipline may properly be imposed. Under all the circumstances of this case, however, we are of the opinion that the penalty imposed was excessive. So far as the record shows, claimant's service with the carrier was otherwise unblemished. He had been in its employ since August, 1940. There has been a practice on this property wherein an organization representative interviews prospective employes, although we are not here declaring that the above-described interview which claimant was conducting shielded him from the supervisory authority of the foreman. But we feel that reinstatement without compensation for wages lost, representing as it does a disciplinary suspension of almost one and one-half years, is sufficient penalty for the claimant's infraction.

AWARD

Claimant Charles F. Johnson shall be reinstated with service rights unimpaired, but without compensation for wages lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1954.