

Award No. 1859

Docket No. 1731

2-GC&SF-EW-'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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L., (Electrical Workers)**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1—That under the current agreement C. C. Farris, car lighting and air conditioning inspector, was unjustly removed or dismissed from the service at 3:00 P. M. Wednesday, June 17, 1953.

2—That accordingly the Carrier be ordered to reinstate this employe in the service with seniority, vacation and pass rights unimpaired including compensation for all time lost subsequent to 3:00 P. M. on the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Electrical Worker C. C. Farris, hereinafter referred to as the claimant, was reemployed on September 22, 1945 by the carrier through its Mr. Voigt, car lighting and air conditioning engineer at Fort Worth, Texas, in the capacity of inspector of car lighting and air conditioning equipment on passenger cars in trains through Fort Worth, including such cars as were occasionally set out of one train to depart in another train.

This claimant previously served the carrier at Argentine, Kansas beginning with September 16, 1927, in the capacity as a coach cleaner, as an electrician helper, as an indentured electrical helper apprentice, as a journeyman electrician in the car lighting and air conditioning department, then as a diesel journeyman electrician and then in the train service as a brakeman for a short period ending in September, 1944. The claimant was then sent to Barstow, California, as a diesel electrician on October 31, 1944 and later on he returned to Argentine as a switchman in the train yard on account of his health. But finally, the carrier's Mr. Voigt, car lighting and air conditioning engineer, persuaded the claimant to accept the position of inspector of car lighting and air conditioning equipment on passenger cars in transit at Fort Worth, Texas, beginning on September 22, 1945, where he remained in such service until June 17, 1953. This is affirmed by the copy of letter addressed to the undersigned on September 27, 1954 by the claimant, submitted herewith and identified as Exhibit A.

that Mr. Cunningham had been guilty of neglect of duty on previous occasions.

There is no question raised concerning the fact that Mr. Cunningham was discharged for any other reason than neglect and inefficiency. No discrimination is shown. It is indisputable that he was discharged solely for the reasons stated by the carrier and that the case is purely a disciplinary one.

The control by the employer over the employe is the responsibility of management. This Division should be very cautious in substituting its judgment in matter of discipline for the judgment of a responsible employer.

For the reason that this is purely a disciplinary action, there being no proof of discrimination, and because the facts upon which this action was based can at best be said to be in conflict, we conclude that there is no ground for disturbing the decision of the management."

The following excerpt is quoted from the "Findings" in Second Division Award No. 1575, Referee Carroll R. Daugherty:

"Numerous awards of this Board have established the principle that in discipline cases the Board will not substitute its judgment for that of the carrier, i. e., will not reverse or modify the carrier's discipline action, unless the employes and/or their representatives are able to produce substantial evidence of probative value that the carrier, in the exercise of its managerial prerogatives, has abused its discretion by proceeding in an unfair, arbitrary, or capricious manner. In considering these matters this Division analyzes the record in order to learn if the carrier's investigation has been conducted in a fair, impartial way and if the penalty imposed by the carrier has been compatible with the offense."

While much has been said by Claimant Farris and also by General Chairman E. F. McLennan of the International Brotherhood of Electrical Workers in an effort to justify the actions of Farris and to alleviate his guilt, the carrier asserts that the facts prove without a shadow of doubt that his actions were of a malicious intent. The carrier is fully convinced that Mr. Farris not only willfully and purposely destroyed the cords to create expensive and unnecessary work, but also for the purpose of placing the carrier in an unfavorable position with its passenger patrons by not having its equipment in proper and serviceable condition.

In conclusion, the carrier respectfully reasserts that the evidence developed during the investigation and the facts and circumstances set forth herein fully support the action of the carrier in the dismissal of Mr. Farris as of 3:00 P. M. on June 17, 1953. In view of all that has been related, the carrier respectfully requests the Board to deny the claim in its entirety.

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.

On June 17, 1953 Claimant C. C. Farris, then employed as axle light and air conditioning inspector at Ft. Worth, was dismissed from carrier's service pursuant to investigation on the property. Carrier asserts he was properly dismissed by virtue of having "broken light cords" on cars 2905 and 2883 at Ft. Worth on May 18, 1953, and for "pulling light cords loose" on car 2883 at Ft. Worth on May 20, 1953. Organization contends the dismissal was unwarranted and requests reinstatement with seniority, vacation and pass rights unimpaired, and with compensation for earnings lost.

Because a number of parlor cars were arriving in Chicago with the wires (cords) to car number signs broken or pulled loose, carrier directed its Special Service Department to ascertain who was responsible. The trouble was traced to Ft. Worth, and on May 20, 1953 a special officer apprehended claimant while in process of pulling wires loose from the number light in a chair car. Claimant admits having broken or pulled loose the wires to car number lights on various occasions. His explanation is that the connections were loose or the wires improperly spliced where a regular plug was supposed to be located, that this condition made very possible a ground (short circuit) that would affect the car air conditioning system, and that he performed such acts merely to bring such condition to the attention of Chicago Terminal where proper repairs could be made.

Claimant did not advise his foreman he was performing these acts, nor did he record these "defects" on the forms provided for this purpose. He did not perform the prescribed test for short circuits. He contends he was testing for short circuits by pulling the cords.

Organization contends claimant was the victim of bias by a particular master mechanic, that he (Farris) did not have the benefit of adequate and competent supervision, and that he was discharged primarily because the carrier believed he was endeavoring to collect excessive overtime in connection with the repair of defects. Carrier asserts claimant's actions were taken with malicious intent.

Upon reviewing the entire record, we are of the opinion that a desire to collect additional overtime pay is by far the most charitable interpretation that could be placed upon claimant's conduct. We can find no excuse for his behavior. The evidence fully supports the charge. There is no showing the discipline imposed was discriminatory, capricious or evidentiary of bad faith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1954.