Award No. 1921

Docket No. 1857

2-P&SF-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

PANHANDLE AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Machinist Local Chairman C. L. Sellers of San Angelo, Texas was unjustly dismissed from the service of the Carrier by verbal notice on February 6, 1954 and written notice on February 17, 1954.

2. That accordingly the Carrier be ordered to reinstate this employe to all service rights with pay for all time lost, retroactive to February 6, 1954.

EMPLOYES' STATEMENT OF FACTS: Machinist C. L. Sellers, hereinafter referred to as the claimant, was employed by The Atchison, Topeka and Santa Fe Railway Company, hereinafter called the carrier, at San Angelo, Texas, and his regular assignment of hours was from 4:00 P. M. to 12:00 Midnight on Tuesdays through Saturdays. This claimant's service with the carrier consists of about 31 years, which began at the time of commencement of his apprenticeship in February, 1923 and who had been, for some time prior to the occurrence of this dispute, the duly authorized local chairman of his craft.

The carrier elected to summon the claimant to stand formal investigation at 4:00 P. M. on January 12, 1954 for the reasons set forth in letter dated January 7, 1954 addressed to the claimant by the carrier's master mechanic, J. L. Fertig, and a copy of which is submitted herewith and identified as Exhibit A. This formal investigation was held as scheduled, and a copy of such transcript, identified as Exhibit B, consisting of 24 pages, together with copy of a statement in connection therewith, identified as Exhibit B-1, was ultimately furnished to the claimant's representative in parts, as reflected in copies of letters dated February 3, February 8 and February 11, 1954, submitted herewith and identified as Exhibits C, C-1 and C-2.

The carrier's Mr. A. J. Hartman, mechanical superintendent, arranged to discuss with the claimant certain features of his testimony in the record of the formal investigation held on January 12. This took place at about 9:00 A. M., Saturday, February 6, at which Mr. Hartman had present Master Mechanic Fertig, General Foreman Repman, a stenographer and Foreman Simpson. After some discussion between Mr. Hartman and the claimant, Mr. Hartman ordered his subordinates to take the claimant out of service at once and this is affirmed by the copy of letter dated February 8, 1954

In conference held at Amarillo, Texas, July 21, 1954, with General Chairman Benson, carrier's general manager, G. R. Buchanan, took the position that the evidence adduced at the investigation held January 12, 1954 proved that Mr. Sellers was guilty of the charges preferred against him and that he could not give favorable consideration to Mr. Seller's reinstatement with pay for time lost, but offered to consider his reinstatement on a purely leniency basis due to his long years of service. Mr. Benson was not inclined to entertain leniency reinstatement, stating that he felt confident he could collect pay for time lost if the case were taken to the Adjustment Board. Finally, and as clearly evidenced by the correspondence between the parties, failure to perform service subsequent to July 21, 1954, is clearly of Mr. Sellers' own making, he apparenty having decided to risk the loss of his seniority and employment rights in an attempt to collect additional pay for not working. Under the circumstances, and without admitting that Sellers was unjustly dismissed, the carrier submits that in no event is he entitled to compensation for any time lost because of refusal of the carrier's offer to reinstate him on a leniency basis. (See Award 15764, First Division.)

In conclusion, carrier asserts:

1. The claimant was afforded a fair and impartial hearing.

2. There was substantial evidence adduced at the hearing to support the charges preferred against the claimant.

3. When considered in relation to the gravity of the offense with which the claimant was charged, the discipline assessed was not arbitrary nor capricious; neither was it harsh.

The claim should, therefore, be denied as being entirely without support under the agreement, the awards of your Board and is wholly without merit as a matter of equity.

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.

Discipline in this case was justified. We believe, however, the Carrier's subsequent offer to reinstate the claimant without pay was and is a just disposition of this case and should have been accepted.

AWARD

Claimant shall be reinstated with seniority rights unimpaired. Claim for time lost is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of May, 1955.