

Award No. 1964

Docket No. 1790

2-UT-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Coach Cleaner T. J. Stevenson was unjustly suspended from the service on June 26, 1954 and who subsequently was unjustly dismissed from the service effective July 2, 1954.
2. That accordingly the Carrier be ordered to reinstate this employee with all of his service rights unimpaired, with pay for all time lost retroactive to June 26, 1954.

EMPLOYEES' STATEMENT OF FACTS: T. J. Stevenson, hereinafter referred to as the claimant, was employed by the Union Terminal Company, hereinafter referred to as the carrier, as a coach cleaner on May 25, 1945 and was regularly employed, as such, until he was suspended from service June 26, 1954. The claimant had nine (9) years and one (1) month's service with the carrier.

Claimant's assigned hours of service were 7:00 A.M. to 3:00 P.M. Thursday through Monday, with rest days of Tuesday and Wednesday.

On June 17, 1954, the claimant requested permission to remain away from service on Saturday, June 19, 1954.

Claimant did remain away from service on Saturday, June 19, 1954, resulting in the carrier's mechanical foreman filing charges against him under date of June 23, 1954, copy of which is submitted herewith and identified as Exhibit A.

The claimant did not receive Exhibit A, consequently no investigation of the charges was held on June 26, 1954. The carrier's mechanical foreman served a second notice of the charges on the claimant under date of June 26, 1954, copy of which is submitted herewith and identified as Exhibit B.

On the same date, June 26, 1954, the carrier's mechanical foreman suspended the claimant from the service of the carrier. A copy of this notice is submitted herewith and identified as Exhibit C.

that Mr. O. B. Sayers has been appointed as your representative for the purpose of conducting investigations."

Mr. O. B. Sayers, referred to in the last above quoted paragraph, is an officer of The Texas and Pacific Railway Company, with headquarters in Dallas. Of the eight proprietary lines who own the Union Terminal Company of Dallas, The Texas and Pacific owns the greatest percentage, or put another way, has the greatest interest. Officers of The Texas and Pacific Railway Company have conducted investigations on the Union Terminal on prior occasions. The general chairman of the organization well knows that to be a fact. He participated in such an investigation on Friday, June 27, 1947. That investigation was conducted by Mr. D. C. Fitch, assistant to vice president—operations, Texas and Pacific Railway Company.

The strange thing is that Mr. Crumpton, the general chairman, objected to Mr. Fitch conducting that investigation. His objection was made a part of the record in the transcript in that case. In the instant case, he nor anyone else objected to Mr. Sayers holding the investigation. Mr. Sayers also conducted another investigation on the Union Terminal on May 15 and 17, 1954, over a month prior to the instant one. The same general chairman of the same organization participated in that investigation and he made no protest during the investigation about Mr. Sayers holding that investigation. He took no such position when he appealed the decision rendered in that case. As an "after-thought" he mentioned it in a subsequent letter, dated July 24, 1954. In other words, it was after the investigation of June 29, 1954, that the organization mentioned their objection concerning the investigation of May 15, and 17, 1954. The reason is obvious. It's just another angle to inject, but one of no consequence.

The general chairman's exception as to the conducting officer can not now be entertained at any rate, because near the close of the investigation (page 70) the following questions were asked and answers received:

(Mr. Sayers questioning)

Q. "Mr. Stevenson, have you had a chance to question all witnesses, and examine all papers introduced in the investigation?"

A. "Yes."

Q. "Has this investigation been held in a fair and impartial manner?"

A. (By Mr. Crumpton, General Chairman, BRCA) "I'll answer that for him. It has with the exception of my statements and objections."

And, of course, nowhere in the investigation or anywhere else did Mr. Crumpton make a statement or objection relative to Mr. Sayers conducting the investigation. Thus, the organization's contention is out of order. We do not know, either, whether or not they will even make the assertion before the Board. It strikes us that it was merely an "after-thought" on their part, anyway. We can only attempt to present our case on the basis of existing facts, and can only answer the contentions the organization made on the property. We have done those things.

The carrier submits that the claim made by the organization is without merit, and we respectfully urge the Board to so find and deny their claim.

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.

Grievant T. J. Stevenson was suspended from service as of the end of his assignment on June 26, 1954, and was subsequently, on July 2, 1954, dismissed from service after a hearing on the charge that he absented himself from duty without proper authority.

The organization first contends that Rule 16 of the applicable agreement provides that an employee will not be disciplined until first being given an investigation. It argues that the suspension constituted discipline in violation of that provision of the rule above summarized. While that may be the effect, the agreement is not necessarily violated because the rule further provides:

"Suspension in proper cases pending an investigation, which shall be promptly held, shall not be deemed a violation of this rule."
(Emphasis supplied.)

In connection with this ground of complaint the record reflects that the offending absence occurred on June 19. A letter notice was allegedly handed to grievant on June 23, setting the matter for hearing on June 26. Upon grievant denying that he received such notice, the hearing was advanced on June 26, to June 29. Also on June 26, the grievant was suspended from service pending formal investigation.

We find that carrier's action in suspending grievant pending investigation was not the "proper case" for the exercise of such right as is contemplated under the quoted portion of Rule 16. It is possible that the suspending official was irritated by grievant's denial that he received the first notice. The offense was not one that continued employment would have affected the service detrimentally or would have endangered the employee or fellow workers such as intoxication, fighting or gross negligence so as to justify the exercise of such suspension right. We are compelled to find the suspension was arbitrary and unwarranted under the circumstances.

We find after a careful reading of the submission that the further contentions of the organization to be entirely devoid of merit. We further find that grievant was accorded a fair trial by a proper hearing officer.

While the penalty of dismissal is always harsh, we find from the record that grievant's absence from work was deliberate, unjustified and in direct violation of the instructions from his superior officer. Under the circumstances of this case, the penalty assessed by the company is adequately supported by the record and we find no justification to interfere with its action. Further, nothing appears in grievant's service record to mitigate the penalty assessed.

AWARD

Claim denied, except that claimant shall be entitled to wages which would have been earned, at pro rata rate, from date of suspension to date of dismissal pursuant to our finding that such suspension was unwarranted. 4

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.