

Award No. 2007
Docket No. 1838
2-C&O-EW-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—Electrical Workers**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)**

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement Electrician Herbert Pence was unjustly suspended on May 8, 1954, and unjustly dismissed from the service on May 13, 1954.

(2) That accordingly the Carrier be ordered to restore the aforesaid Electrician to service with seniority rights unimpaired and paid for all time lost retroactive to May 8, 1954.

EMPLOYEES' STATEMENT OF FACTS: Electrician Herbert Pence (hereinafter referred to as the claimant) was employed as such by the carrier at Russell, Kentucky. The claimant was employed as an electrician by the Carrier on 9-23-52. The claimant was suspended on May 8, 1954. The claimant was charged with insubordination and notified to appear at investigation held in the master mechanic's office at Russell, Kentucky, at 9:00 A. M., May 10, 1954. The investigation was held as scheduled; a copy of the investigation record is submitted herewith and identified as Exhibit A. On May 13, 1954, Master Mechanic Burwell directed a letter to the claimant advising him he was dismissed from the service of the carrier as of that date, a copy of which is submitted herewith and identified as Exhibit B.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective July 1, 1921, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant was unjustly dealt with when he was suspended and dismissed from service, and in view thereof a case was instituted and progressed under the provisions of Rule 35 (a), reading as following:

“(a) Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agree-

Mr. Fugitte if he would go to the pit and he said flatly—'No, I'll go home first.' Then Mr. Fugitte and Mr. Pence turned around and Mr. Fugitte said to me—'We will see about this.' That is the last time I saw Mr. Pence that night and I was on duty until 5:30 A. M."

And Pence walked away.

There can be no question that what has already been shown was insubordination sufficient to warrant dismissal.

But Pence went even further in his insubordination! I quote again from General Foreman Sinnott's statement:

"I was in the process of telling him that Mr. Bortel had called in that he would be a little late. That was as far as I got with my conversation at that time. Mr. Pence spoke up and said—'I want to tell you something and Sloas too, that if I catch you off Company Property I will slap the "S" right out of you.' I told Mr. Pence that I went home every morning and he had an opportunity but that this was beside the point and that I wanted to know if he was going to the pit. He said—'No, I'll go home first.'"

This Pence tacitly admitted. He was asked by Master Mechanic Burwell:

"Q. Did you make a statement to Mr. Sinnott that when you caught him outside of the shop that you were going to slap the 'S' out of him."

This question to any innocent man, even though he be ignorant, would have evoked an immediate and unequivocal denial. Pence's answer was not such a denial but obviously an evasion. He said—

"A. I told him he was a big man but I was not afraid of him and he told Foreman Sloas to let me off at 4:00 A. M. and he would meet me out on the fill."

Nor did Mr. Sinnott's subsequent frank assertion previously quoted that Pence did make the statement bring forth any denial by Pence.

Pence knew—and so admitted—that he should have carried out his foreman's instructions and handled under the grievance rule any claim of rule violation or unjust treatment—if he felt at the time there was ground for such a claim, but he chose to take direct action.

It is well settled by your Board that the imposition of discipline in proper cases is a managerial function, and that only when the judgment of the carrier is clearly shown to have been arbitrary or capricious will this Board undertake to substitute its judgment for that of the carrier. There is absolutely no evidence that carrier's action was arbitrary or capricious, or was discriminatory or evidentiary of bad faith.

Carrier submits that on the record the claims of the employes should be denied.

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.

Sufficient evidence was adduced at the investigation to justify the carrier's determination that the claimant was guilty of insubordination. Thus we will not reverse the carrier in its handling of the matter.

The record does not show that the carrier's action was arbitrary, capricious or excessive.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1955.