# Award No. 2008
# Docket No. 1848
# 2-GC&SF-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.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 97, RAILWAY EMLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

## GULF, COLORADO & SANTA FE RAILWAY COMPANY

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current applicable Agreement, the Carrier, without just cause, assessed R. L. Brand, Electrician, Mechanical Department, 30 demerits against his personal record.

2. That accordingly, the Carrier be ordered to remove said demerits and make R. L. Brand's Mechanical Department personal record clean.

**EMPLOYES' STATEMENT OF FACTS:** Mechanical department electrical worker, Electrician R. L. Brand, hereinafter referred to as the claimant, is an hourly rated employe, regularly employed by the carrier in the mechanical department diesel shop, Cleburne, Texas, as a diesel electric, electrician.

Under date of December 7, 1953, the claimant was notified to appear at investigation in the general diesel foreman's office at 9:00 A. M., December 9, 1953.

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

Under date of February 18, 1954, Mr. J. D. Nimmo directed a letter to the claimant advising him that his personal record file was being assessed with 30 demerits, a copy of which is submitted herewith as Exhibit C.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

**POSITION OF EMPLOYES:** It is submitted that under Rule 33 reading:

> "(e) Prior to the investigation, the employe alleged to be at fault shall be apprised of the charge sufficiently in advance of the time set for investigation to allow reasonable opportunity to secure the presence of necessary witnesses."

heard him dealing with numerous men on various occasions and have never heard him abuse them or use profane language.

(signed) R. L. Lay
Past Local Chairman of Electrs."

Witnesses:

(sgd.) J. A. Hutchinson

Foreman Pierce denied that he used profane language in talking to Electrician Brand and the employes' contention that Brand was provoked into talking to Foreman Pierce in the manner in which he did is without a scintilla of evidence. The burden of proof is on the employes, but they have not produced any evidence to even show mitigating circumstance. It is repeated that Mr. Brand is the accused, was unquestionably found guilty and properly disciplined. Moreover, the general chairman's insistence on appealing the case in spite of the local chairman's concurrence raises a point of order.

The carrier has established that the claimant was properly handled under the agreement; that the claim was not properly filed and progressed in accordance with Rule 33 of the agreement and the provisions of the Railway Labor Act, and that the claimant is not entitled to granting of his request for removal of demerit marks.

Having conclusively established that the claim in this dispute was not presented or progressed in accordance with the controlling provisions of the current agreement, the carrier respectfully petitions that it should be dismissed.

If, however, the Board elects not to dismiss same, the carrier then respectfully submits that the claim is entirely without merit and should be denied.

**DISPUTE: CLAIM OF EMPLOYES:** 1. That under the current applicable Agreement, the Carrier, without just cause, assessed R. L. Brand, Electrician, Mechanical Department, 30 demerits against his personal record.

2. That accordingly, the Carrier be ordered to remove said demerits and make R. L. Brand's Mechanical Department personal record clean.

**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.

The facts of record indicate that, as the result of an investigation, the carrier determined that the claimant was guilty of the charge of insubordination and that his personal record be assessed with thirty (30) demerits.

Rule 21 of the operating rules is a rather broad rule and includes varied items which constitute an offense. Any violation of any one of the several offenses constitutes violation of the rule. The claimant was not charged with dishonesty or immorality, nor was it indicated that his offense fell into either of those two categories. The rule does include "insubordination" as an offense and it was for this that claimant was found guilty and disciplined.

There is no record that the claimant or his representative requested a postponement of the investigation or that a postponement would have resulted in throwing new or additional light on the facts developed at the investigation.

The record reveals that Rule 33(a) was not complied with by either the claimant or his representative when the case was not taken to the foreman within ten (10) days following notice of assessment of discipline.

It is our opinion that the claim should be denied because the case was not appealed in conformance with the provisions of Rule 33(a) of the effective agreement. Even had the appeal been made timely and properly, it would have to be denied on the question of its merits.

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.