

Award No. 2086

Docket No. 1919

2-T&P-CM-'56

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. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carman O. R. Alexander was unjustly dismissed from the service effective April 5, 1955 and that, accordingly, the Carrier be ordered to reinstate this employe to all service rights unimpaired with compensation for his wage losses retroactive to 4:00 P. M. on the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Upgraded Carman O. R. Alexander, hereinafter referred to as the claimant, was employed by the carrier at Marshall, Texas on July 28th, 1948. However, while this claimant was on furlough at this point he was employed as a carman helper at Big Spring, Texas, and thereupon gave up his seniority at Marshall and now has a seniority date of February 21st, 1950 at Big Springs, Texas. The claimant's regular assigned hours and days of work were from 7:00 A. M. to 4:00 P. M., Mondays through Fridays, with rest days Saturday and Sunday.

The carrier's master mechanic filed charges against the claimant under date of March 28, 1955 and a copy of that letter of charges is submitted herewith and identified as Exhibit A. An investigation of said charges was conducted by the carrier's master mechanic, Mr. Webb, on April 4, 1955, and a copy of the transcript of that investigation is submitted herewith and identified as Exhibit B. Nevertheless, the next day, April 5, 1955, Master Mechanic Webb made the election, in writing, to discharge the claimant from the service and a copy of such letter to the claimant is submitted herewith and identified as Exhibit C.

The rules of the agreement effective September 1st, 1949 are controlling.

POSITION OF EMPLOYEES: It is submitted that the dismissal of this claimant on the charge that he was intoxicated on Train No. 8 during the morning of March 26, 1955 is not justified because the carrier adduced no evidence in the investigation, that the claimant had even taken a drink of intoxicating liquor.

guilty when he was unquestionably guilty of wrongdoing, can have no bearing on this case, except in so far as they may incidentally serve to corroborate the carrier's original judgment that this claimant was not the sort of man who should be kept in the service of this carrier.

For the reasons stated, the carrier respectfully represents to the Board that the organization's claim is without merit, and 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.

The record before this Board indicates that evidence brought out at the investigation was sufficient to justify the carrier's conclusion that the claimant was intoxicated as charged. The testimony of the conductor was to the effect that claimant bore the odor of whiskey—that claimant staggered—and that claimant's speech was affected.

There is evidence to the effect that claimant was boisterous, used loud and obscene language in the presence of passengers and interfered with the ordinary and efficient operation of the carrier's passenger train.

There is no indication that the carrier acted arbitrarily, capriciously or in bad faith. Furthermore, the amount of discipline does not seem excessive in this matter.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March, 1956.