

Award No. 2099

Docket No. 1924

2-IC-EW-'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. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Lineman Helper B. L. Mayo was unjustly removed from service during the period June 14, 1954 to November 12, 1954.

2. That accordingly the Carrier be ordered to compensate the aforesaid Lineman Helper for all time lost during the period set forth above in Part 1.

EMPLOYES' STATEMENT OF FACTS: Lineman Helper B. L. Mayo (hereinafter referred to as the claimant) is employed as a lineman helper by the Illinois Central Railroad (hereinafter referred to as the carrier). Claimant was suspended from service on June 14, 1954. Letter dated June 23, 1954 was directed to the claimant by Assistant Superintendent Communications L. R. Willingham advising him to be present "for formal investigation to be held for your failure to properly perform your duties as helper in Communications Construction Gang No. 3 during your tour of duty which commenced 7:00 A.M. June 14th, 1954 and ended 4:00 P.M. June 14, 1954." The aforesaid letter is quoted in the hearing record and identified as Exhibit A.

Under date of July 19, 1954, Mr. Willingham notified the claimant he was dismissed from the service effective July 19, 1954.

Under date of August 23, 1954, Mr. P. B. Burley made a proposal directed to the undersigned to return the claimant to service without compensation, a copy of which is submitted herewith and identified as Exhibit C.

Mr. Burley's proposal was rejected in letter dated August 27, 1954 by the undersigned, a copy of which is submitted herewith and identified as Exhibit D.

Under date of November 3, 1954, Mr. Willingham wrote the claimant as following:

supervisors and if a violation of the agreement results, they must seek relief by appeal to this Board."

Award 2531 contains the following statement: "All the other reasons attempting to justify claimant's conduct are beside the issue. He took upon himself the responsibility of disregarding the orders of his supervisor and thereby subjected himself to disciplinary action by the carrier."

Considering the statements of record, the carrier can discern no reason for doubt that claimant failed to perform his assigned duty properly. Formal investigation of the charge was fair and impartial, as attested in the transcript by the fact that no objection was raised by the claimant or his representative.

This division has enunciated the principle that it can pass judgment only upon the facts of record and must not substitute its judgment for that of the carrier unless there is evidence of abuse of the discretion vested on the carrier.

There is no basis for the claim, and it 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.

Claimant, a lineman helper, was suspended from service on June 14, 1954. He was charged with failure to properly perform his duties as helper. Formal investigation was held July 16, 1954 and claimant was notified of his dismissal by letter of July 19, 1954.

Considering the record in its entirety, we believe that the discipline assessed was excessive and unduly harsh.

The claimant was offered reinstatement without pay for time lost on August 14, 1954, and again August 23, 1954. This was refused and claimant was subsequently offered reinstatement on October 6, 1954. Claimant did not return to work until November 12, 1954. He did not waive his right to compensation for all time lost.

Claimant was furloughed February 25, 1955. This claim was processed to the National Railroad Adjustment Board by letter of June 23, 1955. Claimant was notified by letter dated August 25, 1955 to return from furlough and report for work. As of October 11, 1955, he had not returned nor had he offered any excuse for not returning. Carrier asserts that claimant has forfeited his seniority rights and is no longer an employe—therefore the claim is moot.

The claim had already been processed to this Board prior to claimant's failure to return from furlough. The claim for the interval of time he was held out of service is properly before us. We are not asked to reinstate him nor to pass judgment on anything that has occurred beyond the dates set forth in the statement of claim.

Inasmuch as we have concluded that the discipline was unduly harsh and excessive, it is our opinion that the claimant is entitled to be compensated

for his wage loss, if any, between the dates of June 14, 1954 and October 22, 1954 (the latter date being within a reasonable time of the offer of reinstatement dated October 6, 1954).

AWARD

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1956.