Award No. 2128

Docket No. 2106

2-MFGRS-MA-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

MANUFACTURERS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. — That under the current agreement Machinist Helper J. J. Mikulin was unjustly suspended from the service on December 22, 1954, and subsequently unjustly dismissed from the service on January 4, 1955.

2. — That accordingly the Carrier be ordered to reinstate this employe in the service with all rights unimpaired and compensate him for the wages lost resulting from said suspension and dismissal, retroactive to December 22, 1954.

EMPLOYES' STATEMENT OF FACTS: Machinist Helper J. J. Mikulin, hereinafter referred to as the claimant, was employed as such by the carrier in their engine house, St. Louis, Missouri, since November, 1945, and his assignment of hours was from 6:00 A. M. to 3:00 P. M. on Monday. The remainder of the week he worked from 7:30 A. M. to 4:00 P. M. and his rest days were Saturday and Sunday.

The carrier summoned the claimant by written notice dated Wednesday, December 22, 1954, to report for hearing at 4:00 P. M. Tuesday, December 28th in Room 311, 2927 South Broadway. On the charge contained in copy, submitted herewith and identified as Exhibit A, the hearing proceeded accordingly and a copy of the transcript is submitted herewith and identified as Exhibit B.

The carrier made the election by letter dated January 4, 1955, to remove or dismiss the claimant from the service and copy thereof is submitted herewith and identified as Exhibit C.

This dispute has been handled as provided for in the current agreement effective September 1, 1949, with the result that the highest designated official by the carrier to handle such appeals has declined to adjust it.

POSITION OF EMPLOYES: The primary question in this case is whether or not action of the carrier was arbitrary, unreasonable, or unjust in dismissing the claimant from the service when he was sick and not able to get word to his foreman on December 20th, the first day he was off, but

inadequate for an employe whose past record has been bad. It should be understood that such past record should in no way be considered in determining the guilt or innocence of the party as to the charges for which he is being tried."

Assuming claimant's past record and the evidence brought out in the hearing held on December 28, 1954, warranted some consideration of the request that he be restored to service without pay on a leniency basis, his subsequent acts of misconduct in returning to the property on several occasions in an intoxicated condition and, his last visit when he provoked an altercation, certainly precludes such consideration. He could not expect serious consideration of such request and at the same time appear on the property drunk and disorderly. These subsequent acts of misconduct are not disputed. It is significant that after a copy of the letter written to Mr. Mikulin under date of May 19, 1955, concerning these acts of misconduct, was furnished to General Chairman Terhune, no further action was taken on the case on the property.

Surely, the carrier cannot be expected to restore a man who so many times wilfully disobeyed instructions of his supervisor and who, after being dismissed, engaged in acts of misconduct on the company's property to such an extent that it was necessary that he be barred therefrom.

In conclusion, carrier maintains it has conclusively shown that there is no basis for the claim as presented to it while the case was being handled on the property and that claimant's dismissal was wholly justified. The claim presented by President Michael Fox, Railway Employes' Department, therefore must be denied in its entirety.

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 waived right of appearance at hearing thereon.

A review of the record in this dispute does not warrant modifying the decision of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June, 1956.