

Award No. 2134

Docket No. 1972

2-IC-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman P. G. Casey was unjustly dismissed from service on December 31, 1954.
2. That accordingly the Carrier be ordered to reinstate this employe to service with his seniority unimpaired and compensate him for all time lost.

EMPLOYEES' STATEMENT OF FACTS: The carrier summoned the claimant to stand trial Tuesday, December 28, 1954 at the time and place and for the reasons stated in a letter dated December 22, 1954, addressed to the claimant by the carrier's Mr. Bodell, superintendent, copy of which is submitted herewith and identified as Exhibit A. The trial (hearing) was held as scheduled and a copy of the transcript thereof is submitted herewith and identified as Exhibit B.

Subsequently, the carrier elected to dismiss the claimant from its service between Christmas and New Year or on Friday, December 31, 1954, as shown by letter addressed to the claimant by the Carrier's Mr. Bodel.

This dispute has failed of settlement pursuant to having handled it with the carrier in accordance with the agreement of April 1, 1935 as it has been subsequently amended.

POSITION OF EMPLOYEES: It is submitted that a thorough and unbiased reading of the hearing record discloses the indefensible attitudes of this carrier's local officers toward this claimant, as follows:

"First: The Claimant, by virtue of having been changed from his emergency road work position to working on the repair track, thereby became a victim of discrimination by the General Car Foreman. Certainly, suspension from this road job pending investiga-

by it. Had the train struck the vehicle so recklessly driven by Mr. Casey, it could have seriously injured or killed him. He apparently gave no import to the consequence of his action, which could have lodged the pipe in question in a facing point switch a short distance from the private road crossing, which, in turn, would have resulted in a serious derailment, death or injury to other employes, and possibly passengers, and damage to equipment and property located close by. The carrier's action with respect to the seriousness of this hazard of accident is based on testimony given at the hearing by Engineer Conaty, Fireman Pearson, and Carman Vogt, the "eye-witnesses" to the incident.

In the face of this testimony, to which no objection was raised and which was not shown to be false, when asked by Superintendent Bodell whether or not he operated the truck in a safe manner on the morning in question, he replied that he did and further that if confronted with the same situation again, would act just as he did on the morning the incident occurred.

It is clear, as indicated by the record, that Claimant Casey was not dismissed for merely having had a piece of pipe thrown from a truck driven by him, but that he was dismissed for an act which created a serious accident hazard, and for his subsequent arbitrary, insubordinate attitude in failing to take another assignment as directed, pending investigation.

It is the carrier's position that the hearing held was fair and impartial in all respects, that the evidence adduced proved the charges lodged against the claimant beyond any reasonable doubt, and that the discipline assessed is justified.

There is substantial evidence in the record upon which the decision of the hearing officer was based. In Third Division Award 5366, the Board said, "It is not a proper function of this Board to weigh the evidence and if the evidence introduced is such as to support the findings of the Carrier, it will not be disturbed." In Third Division Award 1632, the Board said, "This Division of the Board is committed to the rule that it will not interfere with disciplinary measures unless it appears that the Carrier acted in bad faith, arbitrarily, capriciously or upon a fundamentally wrong basis." The record shows that the carrier's judgment in this case was not in bad faith, arbitrary, capricious, or fundamentally wrong, and the Board is requested to deny this claim.

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.

On the basis that he was unjustly dismissed from carrier's service as of December 31, 1954 claimant, Carman P. G. Casey, asks for reinstatement to service with seniority rights unimpaired and compensation for all time lost.

The only procedural question raised is based on the contention that claimant did not have a fair hearing, such as Rule 39 of the parties' effective agreement provides he is entitled to, because all of carrier's witnesses were allowed to be in the hearing room during the entire hearing and thus able to hear what other witnesses were testifying to. No rule of the parties' effective agreement is cited to support this contention nor have we been able to find one. No objection to their doing so appears to have been made at the hearing. Such practice is common procedure in civil matters tried in courts and no prejudice appears to have resulted therefrom here. We find this contention to be without merit. It appears, from the record before us, that claimant had a fair hearing.

The testimony of Thomas F. Conaty, engineer, and D. D. Pearson, fireman, the crew in charge of engine 4032 used to operate carrier's passenger train No. 201, on December 21, 1954, together with that of Carman E. J. Vogt, another eyewitness to what happened, establishes claimant carelessly and needlessly drove the truck he was assigned to operate for carrier across its main line track just ahead of passenger train No. 201 which was traveling thereon at about fifty (50) miles an hour. This created a serious accident hazard for which he was responsible and which could easily have resulted in serious injury or death to members of the crew or any passengers on the train, as well as cause serious damage to carrier's property. We find no extenuating facts which in any way relieve claimant of the seriousness of his conduct. The fact that the truck he was driving was not well equipped for hauling the sixteen (16) foot piece of pipe he had thereon and, because thereof, there was danger of its falling off, as it did when the truck bumped as it crossed over the grade of the main line, should have made claimant more cautious than ever about crossing just ahead of an oncoming passenger train. We think carrier's finding that claimant was guilty of conduct "creating a serious accident hazard" is fully supported by the evidence adduced at the hearing.

On the day following the incident hereinbefore referred to Master Mechanic H. L. Harrell directed General Car Foreman L. R. Barron not to let claimant drive the truck until after an investigation of the incident had been made but, in the meantime, to assign him to the rip track. Barron sought to do so but claimant refused to work there, claiming such assignment was contrary to his rights under the parties' effective agreement. Assuming such to be true, a question we need not here decide, the following principles have controlling application:

An employe must be obedient to the orders of his superior regardless of what rights he may have under the provisions of a collective bargaining agreement. His failure to do so will make him subject to discipline for insubordination. If, in obeying such orders, any rights which he may have by reason of the provisions of the agreement are violated he can and must be redressed through the channels which the agreement provides for his protection. There are exceptions to these principles but the facts here presented do not have application thereto.

In the notice of the hearing dated December 22, 1954, claimant was notified carrier would review his record in connection with a previous incident which resulted in his dismissal. This was entirely proper, not as a basis for determining the guilt or innocence of claimant as to the present charges made against him but as a basis for determining the extent of the discipline it was proper to impose upon him if he were found guilty of either one or both charges presently made. Evidence in regard thereto was properly admissible for that purpose. It shows that some eight (8) months previously he admitted being guilty of insubordination and of having an altercation with the General Car Foreman.

We have come to the conclusion that the evidence fully supports carrier's finding of guilt on both charges and, in view of the record as a whole, the order of dismissal is neither arbitrary nor unreasonable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June, 1956.