

Award No. 2141
Docket No. 2175
2-IC-FO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Laborer Paul Devine was unjustly suspended on July 14, 1955 and unjustly dismissed from the service on July 20, 1955.

2. That accordingly the Carrier be ordered to restore the aforesaid Laborer to service with seniority unimpaired and compensated for all time lost retroactive to July 14, 1955.

EMPLOYES' STATEMENT OF FACTS: Laborer Paul Devine, hereinafter referred to as the claimant, was employed at Central City, Kentucky as such in December, 1947 and worked as a laborer and on other positions until July 14, 1955 when he was suspended from service. On July 13, the claimant was notified to appear for hearing at 3:00 P. M., Friday, July 15, 1955.

The investigation was held as scheduled with the exception it was started at 2:45 P. M., a copy of hearing transcript is submitted herewith and identified as Exhibit B.

Under date of July 20, 1955, the claimant was notified that he was dismissed from the service of the carrier, a copy of which is submitted herewith and identified as Exhibit C.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective April 1, 1935, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the hostling of engines is not work coming within the scope of the current firemen and oilers agreement, therefore, it is evident that the claimant or any other fireman and oiler craftsmen should not be instructed nor expected to hostile engines as part of their duties while working as a laborer. The hearing transcript reflects that General Foreman Sparks issued orders for laborers to perform hostling work with the understanding that he would be responsible for anything that may result when laborers hostled engines. This is further confirmed by statements of B. Devine and C. M. Hays dated August 5, 1955.

Considering the statements of record, the carrier can discern no reason for doubt that claimant failed to perform his assigned duty in the proper manner. 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 representatives.

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 visited 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 employees 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.

In the instant case the record supports a finding that claimant proceeded without sufficient caution in the performance of his assigned work. He should be so advised.

Considering all the record, we think the discipline sufficient when the employe is returned to service with original seniority date, without compensation for time lost.

· AWARD

Claim disposed of in accordance with the aforesaid Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1956.