

Award No. 2179
Docket No. 2132
2-C&NW-SMW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement, Sheet Metal Worker John P. Neary was unjustly dismissed from the service on October 30, 1953, and that accordingly the Carrier be ordered to reinstate him in the service with all rights unimpaired and with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: John P. Neary, hereinafter referred to as the claimant, was hired April 26, 1947, in the locomotive department at Chicago Shops, Chicago, Illinois, by the Chicago & North Western Railway, hereinafter called the carrier, and subsequently was working on the shift 4:00 P.M. to 12:00 midnight as sheet metal worker on 2nd shift, Streamline Ramp, Chicago Shops.

On October 27, 1953, the carrier's Mr. W. H. McAmis, supt. of locomotive & car shops, Chicago Shops, made the election to summon the claimant to stand trial hearing at 10:00 A.M. on October 27, 1953 on the charges contained in the hearing statement of October 27, 1953 copy submitted herewith and identified as Exhibit A.

The hearing was held as scheduled and on October 30, 1953, the carrier's Mr. W. H. McAmis, supt., locomotive & car shops, made the election to dismiss the claimant from the service.

This dispute has been handled up to and with the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement of January 1, 1953, to include amendments subsequent to January 1, 1925 is controlling.

POSITION OF EMPLOYEES: This dispute is subject to be determined on the basis of consist of Exhibit A. The hearing was conducted on October 27, 1953 in conjunction with the applicable rules of the aforesaid agreement made between the Chicago & North Western Railway and System Federation No. 12 in pursuance of the Amended Railway Labor Act.

Mr. John Smola, the other employe involved in the fight, had a hearing previous to Mr. Neary's hearing. We have no copy of this statement and

of the fight itself. Claimant admitted the fight and that he struck Smola with his fist. This was the charge on which investigated. The statements incorporated showed additionally that claimant was the aggressor and that he struck Smola in the head with his bag of tools.

The carrier wishes to call the attention of this Board to the fact that the First Division in its Award 4848 held that while ordinarily the failure of permission to confront witnesses would be grounds for vacating the discipline, the claim was denied on the basis of admission of guilt. In First Division Award 14767 that Board held that while claimant was not present when testimony was taken from the conductor it did not appear that this resulted in any action prejudicial to the claimant. Here, as in the awards above referred to, claimant was not prejudiced because of the fact that no other witnesses were present at the investigation because claimant admitted his guilt. Such guilt being admitted by claimant in his own testimony and the charges for which he was being investigated being established by his own testimony, there is no ground for disturbing the discipline assessed on the basis that the investigation was in any manner improper. The carrier submits that the investigation clearly established claimant's violation of Safety Rule No. 8, and that claimant himself was injured as a result of such violation. The discharge of claimant for violation of such a safety rule, particularly in view of the violence of the violation here involved was clearly justified.

The carrier submits that this claim should 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 were given due notice of hearing thereon.

This is not a case of moral turpitude. It concerns two employes who at the hour shifts were changed, or thereabouts, let their tempers flare to the point of exchanging blows over certain utterances by one to the other, and vice versa. Both men knew, or should have known, better and their dismissals were justified. Shortly afterwards, however, the participant other than the claimant was reinstated without pay as the result of actions not clear by subordinate officers of both parties. The claimant is here seeking reinstatement with pay for time lost and after considering all aspects of this case, such claim is denied. In the circumstances peculiar to this case, however, we think discipline has achieved its purpose and the claimant should now have his former seniority rights restored without pay for time or wage loss. In making this decision, the Division does so without establishing a precedent of any kind to be used in any other case or claim.

AWARD

Claimant restored to his former seniority standing without pay for time or wage loss, per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1956.