

Award No. 2365
Docket No. 2292
2-RDG-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier unjustly dismissed Car Inspector Charles J. Schneider, effective September 16, 1955.

2. That accordingly the Carrier be ordered to restore him to service and compensate him for all time lost since his dismissal.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Charles J. Schneider, hereinafter referred to as the claimant, entered the service of the Reading Company, hereinafter referred to as the carrier, as a journal box packer, January 13, 1949, changed to car inspector September 7, 1949, at which position he was working on September 16, 1955. The claimant was assigned to the 3:00 P. M. to 11:00 P. M. shift at Belmont Yard, Philadelphia, Pennsylvania.

The claimant, having reported for duty at the designated starting time, August 12, 1955, and while on duty, was requested by Yardmaster McNaul to assist in inspecting cars in the yard. At this time it was raining and the claimant told Yardmaster McNaul that his wet weather clothing was in a leaky condition and he had arranged with his fellow car inspector on duty at Belmont Yard, that he would stay in the car inspector's shanty and do the book work in connection with the inspection of cars while the other car inspector did the inspecting of the cars.

After some discussion between Yardmaster McNaul and the claimant, the yard master took up the matter with car department supervisory personnel, and the result was a hearing and investigation given the claimant, at which time he was charged with refusing duty and falsifying his time card, hearing scheduled for 2:00 P. M. (DST), Thursday, August 18, 1955.

On September 16, 1955, the claimant was dismissed from the service of the carrier.

that claimant was fully aware he was required to inspect cars whether or not it was raining. The testimony further discloses that claimant submitted time card for 8 hours work performed between 3:00 P. M. and 11:00 P. M. on August 12, 1955, notwithstanding the fact that he had performed no service from 3:00 P. M. to 6:30 P. M. on that date. Claimant in his testimony on August 19, 1955 admitted that this was improper and changed time card to indicate service performed 6:00 P. M. to 11:00 P. M. or a total of 5 hours for August 12, 1955.

The carrier submits, and the Board has so held, that the assessment of discipline is a matter within the discretion of the carrier, and carrier maintains there has been no abuse of that discretion in the instant case. The dismissal of claimant after proper hearing and investigation, in view of the seriousness of claimant's offense, was warranted and justified. The discipline was not assessed arbitrarily, capriciously or without just cause, and your Board has previously held that where the carrier has not acted arbitrarily, unreasonably or without just cause, the judgment of the Board would not be substituted for that of the carrier.

In the handling and discussion of the instant claim on the property, the Brotherhood contended that the discipline assessed claimant was too severe. The employes did not contend that the charges against claimant were not supported by testimony or facts developed at hearing and investigation. With respect to severity of the discipline assessed, carrier desires to point out that as a result of facts developed at hearing and investigation conducted with Mr. Schneider on May 24, 1955, claimant was assessed ten days actual suspension and the following notation placed on his service record:

“7-5-55—10 days actual suspension—absenting himself from duty without notifying anyone, thereby failing to protect the inspection of the interchange cars, and for noting eight hours on his time card, whereas he only was on duty for five hours, Belmont Yard, 5-18-55.”

The fact that claimant had been found responsible for serious infractions of the rules on May 18, 1955 and again on August 12, 1955, the instant case, was fully considered and on the basis thereof the carrier was fully justified in arriving at decision to dismiss claimant from service.

Under the factual evidence presented hereinbefore, it is the carrier's position that claimant was afforded a fair and impartial hearing in accordance with the requirements of Rule 34 (b) of the shop crafts agreement. The record discloses and claimant admits having refused to perform his assigned work and duties for an extended period on August 12, 1955, in view of which and the previous instance of record in which claimant was disciplined for a somewhat similar offense, carrier maintains his dismissal was warranted and justified. The propriety of the discipline should not be questioned by the Board, as it was not assessed arbitrarily or without just cause. There is no long history of continuous employment to be considered here and the record does not contain any evidence of and there are no mitigating circumstances that merit special consideration or any change in the discipline assessed. Carrier, therefore, requests that the claim as submitted to the Board 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.

Claimant was assigned as a Car Inspector at Belmont Yard, Philadelphia, Pennsylvania. On August 12, 1955, claimant reported for work at 3:00 P. M. Carrier alleges that he refused to inspect cars until approximately 6:30 P. M., even though he was directed to do so by a supervisory officer. He made claim for eight hours' pay although he performed no work between 3:00 P. M. and 6:30 P. M. Claimant was given a hearing and discharged from the service of the company. It is the contention of the employes that dismissal from the service was unjustified and, in any event, that the dismissal was excessive.

The record in this case shows that on August 12, 1955, Claimant reported for work at his assigned time. It was raining hard and claimant's weather clothing being defective he arranged for the three car inspectors working with him to perform his work while he remained inside to do clerical work and answer the telephone. There was no clerical work to be performed on this day and the telephone was out of order. There was no foreman assigned to the second trick but the yardmaster, a superior officer, directed him to do his car inspector's work irrespective of the condition of the weather. The claimant refused to do so for 3½ to 4 hours. He turned in a time card for 8 hours' work. The Carrier asserts this to be a false claim for 8 hours' work.

The record further shows that car inspectors are required to work in bad weather and provide themselves with proper clothing in order to do so. It is the contention of claimant that his rain clothing was torn and inadequate. We do not think that this was an adequate excuse as it had rained the day before and claimant should have been prepared for rainy weather the day following. The conduct of claimant cannot be condoned and we find that he deliberately violated the instructions of a superior officer. The record shows also that claimant reduced the hours worked on his time card when the matter was called to his attention. It is also shown that on July 5, 1955, claimant was suspended for 10 days for absenting himself from work without permission.

Claimant had been an employe of the Carrier for six years and had worked as a car inspector for about four years. There is no contention advanced that his work was unsatisfactory. The Carrier does not dispute that claimant had arranged with the other car inspectors to perform his work during the downpour of rain or claimant's statement that such arrangements had been made on previous occasions. It is true that claimant refused to work when directed to do so by the Yardmaster, a superior officer who did not ordinarily supervise claimant directly. This, of course, cannot be condoned. We cannot find that claimant acted in a fraudulent manner in filing a time card for 8 hours' work. He was in error in doing so, but we must give consideration to the fact that he was on the property at the place where his work was to be performed during the time for which he made claim. We conclude that claimant was subject to discipline. We do not think that dismissal from the service could be justified under the mitigating circumstances shown by the evidence. A suspension would have served the purpose of discipline in the present case. We direct, therefore, that claimant be reinstated with his seniority unimpaired without compensation for time lost.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1956.