

Award No. 2436

Docket No. 2319

2-L&N-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the Agreement Carman B. C. Lemons was unjustly dismissed from service at the close of his shift June 20, 1955.

2. That accordingly the Carrier be ordered to restore Carman Lemons to service and compensate him for all time lost due to said dismissal.

EMPLOYEES' STATEMENT OF FACTS: Carman B. C. Lemons, hereinafter referred to as the claimant, after serving an apprenticeship (4 years) established seniority as a carman at Corbin, Kentucky March 4, 1952 and worked in this capacity until his dismissal on June 20, 1955.

Under date of May 25, 1955, the carrier notified the claimant of charges of being under the influence of intoxicants or narcotic on May 19, 1955, etc.

On June 3, 1955 investigation was held in the office of the master mechanic at Corbin, Kentucky.

Under date of June 20, 1955 the master mechanic advised the claimant he was dismissed from service and would not be permitted to work any more after June 20, 1955.

The agreement of September 1, 1943 as amended is controlling.

It is submitted that there is no evidence, whatsoever, to justify the carrier's dismissal of the claimant. The charges themselves are not specific as provided by the agreement and indicate the uncertainty of the carrier as to what was wrong with the claimant.

Nowhere within the transcript of investigation was there any evidence whatsoever that the claimant was under the influence of narcotics.

to be reinstated or rehired by the carrier. Reinstatement or rehire of a former employe dismissed from service is within the discretion of the employer. (First Division Award No. 14421, Referee Whiting.) Also see First Division Awards Nos. 15316, 15317 and 15318, in which it was held:

"The Board is without power to pass upon the propriety of the penalty imposed or to direct the Carrier to reinstate or rehire. The principle laid down in Awards 13052 and 14421 is in all respects reaffirmed and controlling in this case."

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.

In this docket the position advanced by the claimant is that "there is no evidence, whatsoever, to justify the carrier's dismissal of the claimant. The charges themselves are not specific."

The notice given the claimant referred specifically to the time, place, and occurrence which was to be investigated, fixed the time and place the investigation was to be held and reminded the claimant of his right to be represented and have witnesses, all "according to Rule 34" of the agreement.

It thus appears that the notice requirement of the rule has been met.

As to evidence "to justify the carrier's dismissal" we observe that there is a conflict of evidence with many employes testifying negatively that they neither saw nor smelled any evidence of intoxication. There is also affirmative evidence that the smell of intoxicants was present, that the claimant was incapacitated, that the medical examiner found the claimant well enough to be sent home and one fellow employe who accompanied the ambulance to the hospital, when questioned by the local chairman, testified contrary to the claimant, that in conversation with Dr. K. P. Smith "I heard him (Lemons) mention that he had drunk some whiskey on the day before, but I didn't hear him mention that he had drunk any that day."

The record does not contain any supporting facts presented by the claimant touching on what sickness or other cause would explain the claimant's condition at the time he was incapacitated.

This Board finds that in this docket there is not only some evidence, but in fact there is a preponderance of evidence, supporting the conclusion that claimant was intoxicated and that the claimant was given a fair hearing after notice and an opportunity to secure witnesses.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May, 1957.