Award No. 2466
Docket No. 2168
2-MP-FT-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

MISSOURI PACIFIC RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

(1) That under the current agreement Sheet Metal Worker Apprentice T. M. Williams and Electrician Apprentice M. R. McClure, and employed as such in the Kansas City Shops, were improperly removed from service and are entitled to reinstatement with seniority unimpaired and compensation for time lost.

That on May 11, 1955, the employes representative appealed to the highest representative of the Carrier, Mr. T. Short, Chief Personnel Officer, and he did not answer the appeal until July 14, 1955, which is in direct violation of Article 5 of the August 21, 1954 Agreement.

EMPLOYES' STATEMENT OF FACTS: Apprentice Williams (seniority date 6-2-53) and Apprentice McClure (seniority date 11-20-53) hereinafter referred to as the claimants, remained in the service of the Missouri Pacific Railroad, hereinafter referred to as the carrier, until they were removed from service at 4:00 P.M. March 28, 1955, pending investigation set for April 1, 1955 in the master mechanic's office, Kansas City, Missouri.

On March 28, 1955, claimants were furnished letter from Master Mechanic Daniel. See submitted Exhibit A.

April 1, 1955 claimants appeared with their chosen representatives in the office of Master Mechanic Daniel, in line with his letter dated March 28, 1955, (see Exhibit A). The carrier refused to conduct a joint investigation and chose Apprentice McClure first to be investigated. Submitted and referred to as Exhibit B, is a resume of the investigation.

On April 15, 1955 further investigations were conducted and the submitted referred to as Exhibits C-1-2 are a resume of the investigation.

though he did not object to doing as requested insofar as Superintendent Campbell is concerned.

Following this conference, the matter was again discussed with Assistant General Manager Holtzmann by Assistant Chief Personnel Officer Smith, but no change was or could be made in the original decision made in conference on June 9, 1955, as set forth in the chief personnel officer's letter to President Hawley under date of July 14, 1955.

We believe it is conclusive that both parties recognized the request of the federation was changed to a request for leniency and that was the only basis upon which it was discussed. Accordingly, Article V is not applicable and was, of course, not violated.

The request for reinstatement and claim for compensation for time lost 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 employes involved in this dispute are respectively carrier and employe with 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 case involves two areas of dispute. In the first instance two claimants were terminated and now seek reinstatement; while in the second situation the organization claims a procedural violation of the agreement. We shall dispose of the cases in that order.

One claimant, a sheet metal worker apprentice, entered the service of the carrier on June 2, 1953 and was terminated on April 20, 1955 after completing less than half of his apprenticeship. The other claimant, an electrician apprentice, entered the service of the carrier November 20, 1953 and was terminated on April 20, 1955, having completed about one-fourth of his apprenticeship. Both claimants were discharged at the same time, the reason being given that they refused to comply with the instructions of the master mechanic to provide letter of explanation as to reasons why apprentice lessons were not turned in for the period February 15 to March 15, 1955. The record discloses that the claimants received verbal and written instructions from the master mechanic to furnish an explanation of their tardiness in the matter of the apprentice lessons and that both failed or refused to comply with the request. No plausible reason is advanced for failure to comply. The request was proper, reasonable and easily fulfilled; and it was understood by the claimants. A mere note of explanation would have been sufficient. Refusal to comply or to offer a plausible excuse amounts to insubordination. The claimants testified that they refused to comply on advice given to them by their local chairman, who had advised them to not furnish the master mechanic with a written statement of explanation. We don't think the advice was sound. We find nothing in the agreement authorizing the local chairman to issue such countermanding instructions. The claimants understood what they were doing and they assumed personal responsibility for their acts. We must conclude that the claimants are guilty of the charges preferred against them. They were insubordinate. They deliberately refused to comply with valid, understandable instructions given to them by their supervisor during the course of their employment. This Board has held in many previous awards that discharge is a proper penalty for insubordination. We find nothing in this case to alter that general rule. The claim will be denied.

Admittedly the carrier exceeded by some three (3) days the time limit of sixty (60) days within which it was to confirm in writing its decision.

The organization contends that because of this breach the carrier is obligated to reinstate the claimants. The purpose of such a rule is to keep claims from growing stale and to expedite the proceedings covered by the rule. We find no merit in the contention that because of a few days' delay in issuing a statement the carrier has lost the right to have discipline upheld. There is no showing in the record that the claimants were injured by this brief delay. Most certainly the parties should attempt to stay within time limitations prescribed for procedural requirements, but the failure to do so cannot otherwise void the proper exercise of disciplinary control. Agreements of this kind regulating the employer-employe relationship must be given a reasonable, workable construction and not construed so narrowly as to defeat justice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of June, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2466

The claim of the employes is:

1. That under the current agreement Sheet Metal Worker Apprentice T. M. Williams and Electrician Apprentice M. R. McClure, and employed as such in the Kansas City Shops, were improperly removed from service and are entitled to reinstatement with seniority unimpaired and compensation for time lost.

2. That on May 11, 1955, the employes representative appealed to the highest representative of the carrier, Mr. T. Short, Chief Personnel Officer, and he did not answer the appeal until July 14, 1955, which is in direct violation of Article 5 of the August 21, 1954 Agreement.

The majority states:

> "Admittedly the carrier exceeded by some three (3) days the time limit of sixty (60) days within which it was to confirm in writing its decision."

This erroneous conclusion of the majority is contrary to the language and intent of Article V of the August 21, 1954 agreement, the pertinent part of which provides:

> ". . . Should any such claims or grievances be disallowed, the carrier **shall,** within 60 days from the date same is filed, notify whoever files the claim or grievance in writing of the reasons for such disallowance. **If not so notified, the claim or grievance shall be allowed as presented. . . .**"

The record affirms the employes' contention that the carrier failed to answer the appeal of the employes within the time provided by Article V and waited a total of sixty-five (65) days before answering the appeal.

In Award 2370 the majority found:

> ". . . If, as here, no hearing is requested the supervisor (foreman) must render a written decision within 30 calendar days from the date on which he received the claim and, if he fails to

do so, the position of the employe shall be sustained. Meeks rendered no such decision. **It should be observed the provision that the claim 'shall be sustained' is contractual.**

Award: Claim sustained as it relates to St. Petersburg."

In Award 1519 the majority found:

"On resort to the calendar it becomes apparent from the foregoing statement that the claim was not filed with this Division within ninety days after the date of the decision of the carrier's final officer of appeal. . . . Therefore, in the face of the confronting facts and circumstances, all we can do is to hold that failure to file the claim with the Board within the time required by the agreement precluded its consideration and requires its dismissal.

Award: Case dismissed."

The record discloses that hearing with referee sitting as a member of the Division was held on February 5, 1957. The majority waited until June 5, 1957 to render an award.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink