

Award No. 2468
Docket No. 2242
2-NYC&StL-SM-'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. 57, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

NEW YORK, CHICAGO & ST. LOUIS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Mr. Louis J. Mondy was unjustly suspended for fifteen working days beginning January 3, 1955.
2. That accordingly the carrier be ordered to compensate Mr. Mondy for all time lost as a result of said unjust suspension.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker (water service) Louis J. Mondy, hereinafter referred to as the claimant, is employed by The New York, Chicago & St. Louis Railroad Company, hereinafter referred to as the carrier, as such with about 10 years' service, 5 of such years as helper and the remaining years as mechanic.

Under date of January 4, 1955, a letter was directed to the claimant by Mr. B. W. Merrill, B&B Supervisor, citing him for investigation to be held on January 11, 1955, a copy of which is submitted as Exhibit A. The investigation was handled as scheduled and submitted as Exhibit B is a copy of the hearing transcript. Under date of January 19, 1955, Mr. Merrill directed a letter to the claimant advising him he had been given 15 working days actual suspension, a copy of which is submitted 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 October 1, 1952, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant was unjustly dealt with when he was suspended for fifteen working days beginning January 3, 1955. The hearing transcript contains the facts and evidence on which the claimant was adjudged guilty and a reading of that record from a practical and impartial standpoint does not uphold the car-

charge the employe has been removed from the position held, reinstatement will be made and payment allowed for the assigned working hours actually lost, less any earnings in or out of the service."

Now let us examine the exact procedure followed in this case under Rule 28:

Claimant was held out of service effective January 3, 1955, pending investigation. He was advised in writing the reason for investigation on the following day, or January 4, 1955. He was advised that he might bring representatives of his choice. The investigation was held on January 11, 1955, which was within ten days from date withheld from service. At the investigation he was assisted by his representative. Decision was communicated to claimant on January 19, 1955, which was within ten days after completion of the investigation. All of these steps were taken in strict compliance with Paragraph (a) of Rule 28. (Carrier's Exhibits A, B, and C.)

A transcript of statements taken at the investigation was made. Copy was furnished the employe or his representative.. That transcript is carrier's Exhibit B and complies with Paragraph (b) of Rule 28.

Claimant was advised in writing the reason for discipline (carrier's Exhibit C). This is in compliance with Paragraph (c) of Rule 28.

Appeals and the handling on appeals as provided in Paragraph (d) of Rule 28 are covered by carrier's Exhibits D to P, inclusive.

Both claimant and his representative, in answer to direct questions, agreed that the investigation had been conducted in accordance with the requirements of the working agreement.

The carrier has shown that in conducting the investigation and applying discipline the provisions of the working agreement, including Rule 28, were strictly complied with. At the investigation, substantial evidence was introduced by not less than four witnesses (Merrill, Dalrymple, Zoratti, and claimant himself) that claimant persisted in doing as he pleased despite contrary instructions. The decision to discipline claimant for his failure to follow the instructions of his foreman and supervisor was based on substantial direct evidence introduced at the investigation. The discipline assessed was most lenient and was in consideration of the claimant's otherwise clear record.

The claim is without merit and 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 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.

The claimant, a water service mechanic, was given fifteen (15) working days' actual suspension for allegedly refusing to follow instructions of his foreman and supervisor, by a letter dated January 19, 1955 from the B&B Supervisor. The suspension began January 3, 1955. He has been employed by the carrier about ten (10) years.

The claimant was on authorized vacation leave and scheduled to return to work Monday, January 3, 1955. He was assigned to a gang that worked out of camp cars. The camp cars are moved about on the property as needed

by work requirements. The claimant resides at Conneaut, Ohio. When he left on his vacation the camp cars were at Lorain, Ohio. He did not learn until the morning of January 3, that his gang was to do some emergency work that day in Conneaut. There is considerable conflict in the evidence as to what transpired that day when he returned for work. The record is clear that the claimant insisted that he had to go to Lorain that morning to get his work clothes out of the camp car. He was dressed in his traveling clothes. Actually, the camp cars had been billed out to West 110th Street in Cleveland, Ohio but that fact was not too well known the morning of January 3. The supervisor and at least the foreman each testified that the claimant was told that if he went to Lorain for his work clothes he would not be paid for that day. He did go to Lorain and came back the same day, and reported for work the next morning and was held out of service, and subsequently suspended fifteen (15) working days without pay.

According to the record, supervisory personnel never clearly and firmly told the claimant he could not go and get his work clothes. He was clearly told he would not get paid for the day if he did go. We do not believe this amounts to refusal to follow instructions. The supervisor did testify that he ordered the gang to work in Conneaut that day, and since the claimant was a member of the gang, he was ordered to stay in Conneaut. We do not give much weight to this testimony, as it appears to us to be more of an afterthought rather than a positive command to go to work directed at the claimant, who was without work clothes and who was trying to get to his work clothes so he could go to work. Since the dispute centered around the claimant, clear and unmistakable orders should have been issued to him and not to the gang. The record simply does not support the charge that the claimant refused to follow instructions.

AWARD

The employees' claim is sustained.

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.