

Award No. 2529

Docket No. 2438

2-MP-MA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Machinist Paul W. Hill was unjustly suspended from service on July 27, 1955 and subsequently unjustly dismissed from the service on August 2, 1955.
2. That, accordingly, the Carrier be ordered to compensate this employe for the wages lost resulting from said suspension and dismissal, retroactive to July 27, 1955.

EMPLOYES' STATEMENT OF FACTS: Machinist Paul W. Hill, hereinafter referred to as the claimant, was first employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Poplar Bluff, Missouri, as a machinist helper apprentice on October 1, 1942. He worked at the Poplar Bluff roundhouse until November 6, 1950 at which time he transferred to the St. Louis diesel shop and remained in service as lead machinist until July 27, 1955. His assigned hours were from 4:00 P. M., to 12 Midnight.

The carrier summoned the claimant by written notice, dated July 28, 1955, to report for a hearing at 10:00 P. M., (C.S.T.), July 29, 1955, at the assembly room at 3001 Chouteau Avenue on the charges contained in copy as submitted herewith and identified as Exhibit A. The hearing proceeded accordingly and a copy of the transcript is submitted herewith and identified as Exhibit B. The carrier made the election by letter dated August 2, 1955 to remove or dismiss the claimant from the service and copy thereof is submitted herewith and identified as Exhibit C.

This dispute was appealed to the highest officer, so designated by the carrier, on November 28, 1955, copy of that letter submitted herewith and identified as Exhibit D.

On January 19, 1956, the carrier advised, copy of this letter submitted herewith, identified as Exhibit E, that it had restored the claimant to service on January 3, 1956; on a leniency basis with seniority rights unimpaired, declining the claim for pay for time lost.

"Any defect in the method of conducting the investigation would of necessity have to be shown to be prejudicial to the rights of Claimant to be an error sufficient to void the proceedings."

In the instant case no rights of the claimant were or could have been prejudiced by the absence of General Foreman Schultz at the investigation held on July 29, 1955. This is so because the general foreman was not present during the altercation or the events leading thereto. His testimony would have, of necessity, been confined to statements concerning the reputation of the accused.

On this railroad, discipline is believed to be educational as well as punitive. Accordingly, when discipline has served its purpose, we believe it should be removed—but not until it has served its purpose. In the instant case, the assistant general manager restored the claimant to service when he believed the purpose for which discipline was assessed had been served.

Your Board has repeatedly held that discipline is and must remain the prerogative of management since the safe and efficient operation of the railroad rests upon management. To hold otherwise would require the carrier to operate its property with safety and efficiency bearing sole responsibility for any failure to do so, while denying management the right to exercise any control over the conduct of its employes or to require their compliance with its rules, regulations and instructions.

For the reasons set forth above there is no basis for the instant claim and it must therefore 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.

This case involves a claim for wages lost between date of suspension July 27, 1955, (and later dismissal) and January 3, 1956, at which time Claimant was reinstated to service with seniority rights unimpaired but without reimbursement for wage loss. The act of engaging in fisticuffs with a fellow employe while on duty, the reason for the suspension and dismissal, is admitted.

The Employes contend that the dismissal was arbitrary and unjust: that Claimant had been denied a fair hearing, and that the Carrier had denied the Claimant the presence of a necessary witness. These grounds of objection are based in the main upon the hearing officer's actions in denying the Claimant's request to call as his witness, one E. A. Schultz a General Foreman. While Schultz was available, the Hearing Officer believed his testimony would be immaterial because he had not been present at the altercation. The Carrier contends that Claimant was not prejudiced by Schultz's absence.

The gist of what General Foreman Schultz could have testified to is contained in Exhibits G-1, 2 and 3, attached to the Employes initial submission and is summarized as follows: that prior to the altercation in question Claimant had complained to him that he was having trouble with Hostler Beaty carrying out his instructions: that Beaty's refusal to do as he was told was hindering Claimant in the proper performance of his duties as Lead Machinist. Thereafter, Schultz talked to Beaty instructing him that he

would have to take orders from Claimant and that when the latter gave him instructions it was the same as if he, Schultz, had given them. At that point, Schultz would have further testified that Beaty told him that he was going to beat hell out of Hill, the Claimant.

The above was testified to by Claimant himself, at the hearing without objection (Employes transcript, page 33), and was presumably considered by the Hearing Officer. The bad feelings existing between Beaty and Claimant is clearly evident from a reading of the transcript. True, Beaty denied that he had received instructions to follow Claimants' orders. (Page 27.) Schultz's testimony to the contrary might have tended to discredit Beaty's testimony as to who struck the first blow, but that fact is not material—the discharges of the participants were based upon the act of fighting which was not denied. The resultant penalty assessed was not unwarranted or unreasonable under the circumstances present.

We should caution hearing officers in assuming to prejudge the relevancy of testimony desired to be offered by respondents at grievance hearings. Better to risk the waste of a few minutes hearing time for the irrelevant than to expose the Carrier to payment of several thousand dollars in lost wages in a case where the exclusion is later deemed prejudicial. Where confronted with a refusal to permit the taking of testimony, the respondent's representative would facilitate later review by reading into the record the facts that he would intend to establish from the witness whose testimony is banned. This practice would avoid the type of objection registered here to the effect that the Employes have gone outside the transcript of the record in showing, through Exhibits G-1, 2 and 3, what General Foreman Schultz would have testified to if he had been permitted to appear at the hearing.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June, 1957.