

Award No. 2540

Docket No. 2202

2-CRR-FO-'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. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

CLINCHFIELD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement stationary-fireman-laborer C. Paul Hampton was unjustly dismissed from the service on June 24, 1955, Erwin, Tennessee.

2. That accordingly he is entitled to be reinstated to his former seniority rights with compensation for all time lost from June 6, 1955, date of his suspension from the service.

EMPLOYEES' STATEMENT OF FACTS: Stationary-Fireman-Laborer C. Paul Hampton hereinafter referred to as the claimant, was employed by the carrier on February 15, 1941 with a continuous seniority dating therefrom. His regular assigned hours were 11:00 P. M. to 7:00 A. M., Saturday through Wednesday, with Thursday and Friday rest days.

The claimant was summoned verbally on or about June 6, 1955 that he would be given an investigation on June 13, 1955. Investigation was held as scheduled and submitted herewith as Exhibit A is a copy of the hearing transcript. Submitted herewith as Exhibit B is a copy of the dismissal notice of June 24, 1955.

This dispute has been handled with the proper carrier officials from the bottom to the top, with the result that the highest designated officer has declined to settle it.

POSITION OF EMPLOYEES: It is submitted that the carrier produced no evidence in Exhibit A, the transcript of the hearing conducted on June 24, 1955, which could possibly be construed as convicting the claimant of refusing to perform any duties assigned by to his foreman, or of convicting him of being "ungovernable in following instructions issued by his superiors".

The claimant was the local chairman for the firemen & oilers' organization, and felt that it was his duty to express his opinion that, the work

The action of the carrier was not unreasonable, arbitrary, or capricious. The employes recognized this fact in their appeal for leniency, which was granted.

This claim is wholly without merit. It should in all respects be denied, and carrier respectfully requests the Honorable Board to so hold.

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 this dispute were given due notice of hearing thereon.

The claimant, a stationary-fireman-laborer, who has been continuously employed by the carrier since April 20, 1945, is local chairman of his organization, and in the latter part of May, 1955 was instructed to remove the plastic lining of a dead boiler that had fallen down inside a fire box. The claimant did not do the work claiming that it was hazardous and dangerous, and work that should be done by a boilermaker. About two (2) weeks after he was told to do the work, it was done by another worker. The carrier suspended the claimant for refusal to do the work in early June, 1955 and dismissed him from service on June 24, 1955.

The evidence in the record, and the oral arguments, are hopelessly in conflict as to whether the work was dangerous and hazardous. The carrier says it was not, and the organization says it was. We find that a preponderance of the evidence supports the claimant's contention that he had good and sufficient reason to believe the work was unsafe and that it was unreasonable to ask him to do it, and his refusal to do the work was not insubordination.

During negotiations on the property attempting to settle this dispute, the carrier offered to grant the organization's request for leniency and reinstate the claimant to his former job without pay for time lost and with seniority unimpaired. Before this arrangement could be consummated the organization requested that the claimant receive two (2) weeks' pay for vacation allowance. The carrier would not agree to the vacation payment and the entire offer of settlement was withdrawn, and the case eventually filed with this Board for settlement.

Since we have found that the claimant was unjustly terminated, we must order his reinstatement to his former position, with all seniority rights and compensation for all time lost from June 6, 1955, the date he was unjustly suspended. So that there may be no misunderstanding about the effective date this award begins, it is our finding that the claimant was both unjustly suspended and unjustly terminated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of July, 1957.