

Award No. 2692
Docket No. 2492
2-L&N-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman (Engine Carpenter) C. L. Roby was unjustly discharged from service on June 4, 1956.
2. That accordingly the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Under date of May 14, 1956 carman (engine carpenter) C. L. Roby, hereinafter referred to as the claimant, was notified by the carrier's master mechanic that he was charged with responsibility of sleeping while on duty May 13, 1956, and that investigation would be held in his office Friday, May 18th, beginning at 9:30 A.M., copy of that notification is submitted herewith and identified as Exhibit A.

On May 18, 1956 investigation was held in the office of the master mechanic at DeCoursey, Kentucky in connection with the aforementioned charges and copy of the transcript is submitted herewith and identified as Exhibit B.

Under date of June 4, 1956 the carrier's superintendent notified the claimant that bulletin No. 49 regarding the dismissal of an engine carpenter applied to him and, in effect, dismissed the claimant effective that date. The superintendent's letter of June 4, as well as bulletin No. 49, is submitted herewith and identified as Exhibits C and C-1.

The claimant's service record with the carrier is 21 years, 2 years laborer, 6 years carman helper, and the remainder of the time as carman (coach carpenter).

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

action can be established. None is here shown. Reasonable grounds exist to sustain the determination of guilt made by the carrier." (Second Division Award 1809, Referee Carter.)

"There is nothing in the record to indicate that this employe was not accorded a fair hearing. Though the testimony is conflicting, there was sufficient evidence to justify the finding of the management that the claimant was intoxicated while on duty. This Division will not under such circumstances set aside the finding nor will it interfere with the penalty imposed unless there has been an abuse of discretion." (First Division Award 11026, Referee Thaxter.)

"While there was a difference of opinion shown in the investigation, there was sufficient testimony adduced to reasonably support the findings made by the inquiring official. Under such circumstances this Division may not substitute its opinion for the judgment of the management." (First Division Award 11728, Referee Lewis.)

"In proceedings such as these we do not examine the record of testimony to determine weight or credibility. We look for substantial and satisfactory support, and when that is found our inquiry ends. Awards upon this point are so numerous as to make citation of any of them unnecessary." (First Division Award 14552, Referee Mabry.)

The carrier submits that the dismissal of Roby was not arbitrary, unreasonable or unjust; it was not in violation of any provision of the current agreement and should stand. A dismissal for cause terminates the employment relationship and the dismissed employe has no enforceable right 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.

The evidence submitted in this case is sufficient to establish that the claimant was guilty of the charge of sleeping while on duty. We believe, however, considering his past work record, that the discipline assessed by the carrier was too severe and that by this time the claimant has been sufficiently disciplined and that he should be re-instated as a matter of leniency.

AWARD

Claimant, C. L. Roby, will be re-instated with seniority rights unimpaired, without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1957.