Award No. 2787
Docket No. 2532
2-UP-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105 RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Union Pacific Railroad Company elected under the current agreement to take action against Carman Lester L. Lawson to wit:

a) Unjustly suspend him from its service without a hearing on August 12, 1955.

b) Unjustly dismissed him from its service on December 29, 1955.

2. That accordingly the Union Pacific Railroad Company be ordered to reinstate this employe to all service rights with compensation for his total wage loss retroactive to August 12, 1955.

EMPLOYES' STATEMENT OF FACTS: The Union Pacific Railroad Company hereinafter referred to as the carrier, employed Lester L. Lawson, hereinafter referred to as the claimant, at Kansas City on October 5, 1941. Except for the period from February 26, 1944 to January 21, 1946 when claimant was serving his country during World War 2, he has been continuously in the employ of the carrier and at the time of his suspension was regularly assigned as carman mechanic.

As a result of an article published in a Kansas City newspaper August 11, 1955 relating the fact that claimant had been arrested by Wyandotte County Deputy Sheriffs on charges of grand larceny and receiving stolen property, the carrier suspended him from service pending a hearing under Rule 37 of the agreement.

Moreover, although Rule 37 notes that the hearing should be "prompt", it does not provide that the question of "promptness" should vitiate assessments of discipline for undisputed guilt. The only real condition imposed by Rule 37 as to the imposition of discipline is that the employe shall be afforded "a fair hearing by designated officer of the Carrier". There is no dispute as to the fact that Lawson was afforded such a hearing. Neither does Rule 37 provide for reinstatement and pay for time lost for an employe who is not afforded a hearing within a period which the organization considers "prompt". On the contrary such reinstatement with pay for time lost is only provided where it is subsequently found that the employe has been "unjustly" dismissed from the service. Lawson's conceded and admitted guilt of the charges precludes any finding that he was "unjustly" disciplined.

The organization's other basis for seeking reinstatement with pay for time lost on behalf of Lawson is that the penalty of dismissal was allegedly too severe. That, however, is a matter entirely outside the scope of consideration of the Second Division. Guilt of the charges having been demonstrated, and a fair hearing afforded, the determination of the extent or measure of discipline to be imposed is within the scope of managerial prerogative and not the reviewing authority of the National Railroad Adjustment Board or the organization.

The claimant was employed as a car inspector and, as such, his duties required the inspection of cars which on many occasions would contain valuable merchandise. The carrier is not required, and does not feel it would be fair to the shipping public, to retain in its employ a man who has pleaded guilty to a charge of receiving stolen goods. The shipping public expects honesty and reliability from the carrier, and the carrier on its part expects, and has a right to expect, the same traits from its employes. It so indicates in Rule 700.

The carrier had an absolute right to dismiss from its employ a man found guilty of receiving stolen property. There is no proper basis for the organization's claim for reinstatement and pay for time lost, and the claim 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 the dispute were given due notice of hearing thereon.

This claim raises the question whether Rule 37 has been violated in not granting a prompt fair hearing to the grievant. The rule declares "Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule."

From the facts shown, which were known to the carrier on August 11, we conclude that the present situation was a proper case for suspension. Thereafter, the grievant while awaiting trial in criminal court, could not reasonably be expected to be urging an early pre-trial hearing before the carrier, where the informal procedure might jeopardize his position in the criminal trial to ensue.

Following his conviction he was given a reasonably prompt investigation, after having been notified precisely of the carrier's charge against him. He was well represented at the investigation, and it cannot be found that he was "disciplined without a fair hearing."

The carrier based its action on Rule 700 which provides for the termination of any careless, insubordinate, dishonest, immoral, quarrelsome or vicious employe.

Lawson, having plead guilty in criminal court, thereafter confirmed his alleged "dishonesty" when he admitted the court conviction at the carrier's investigative hearing. Courts of law have described a plea of guilty as a judicial confession, which admits all the facts constituting the offense with which a defendant stands charged. Generally speaking, no appeal from a guilty plea is permitted, on the theory that no error could have been committed in a case where the accused has, in effect, convicted himself.

This Division, reviewing the instant case, is in like position. Many awards have established that we are not triers of the facts; that our duty is to establish only that the fair hearing required by the rules has been given, and not to substitute our judgment for those who have had the direct and immediate opportunity to evaluate the witnesses and their evidence. Thus, leniency is a prerogative which is not available to this Division, much as we might desire to recognize the personal qualities, family problems, veteran status, or union affiliations of any grievant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1958.

DISSENT OF LABOR MEMBERS TO AWARD No. 2787

We dissent from the finding of the majority that "the present situation was a proper case for suspension." A proper case is one which could or would endanger company property, company employes, or the public, if the offending employe is not removed from service immediately. (See Second Division Awards 724, 1261, 1697, 2175.)

The majority's statement that "it cannot be found that he was 'disciplined without a fair hearing' " ignores the fact that although the claimant was suspended on August 14, 1955 he was not accorded a hearing until December 8, 1955. This was obviously such a lack of due process as to deny the claimant his inherent rights to a fair hearing on a precise charge as assured him under Rule 37 of the collective agreement. Since the carrier did not follow the procedure as prescribed in Rule 37 the conclusion of the majority in the instant case is in error.

/s/ R. W. Blake
/s/ C. E. Goodlin
/s/ T. E. Losey
/s/ E. W. Wiesner
/s/ James B. Zink