

Award No. 2897

Docket No. 2478

2-L&N-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman S. M. Vinson was unjustly suspended on May 9, and unjustly discharged from the service on May 28, 1956.

2. That accordingly the carrier be ordered to restore this employee to service with all seniority rights unimpaired and with compensation for all time lost retroactive to May 9, 1956.

EMPLOYEES' STATEMENT OF FACTS: Carman S. M. Vinson, herein-after referred to as the claimant, with 34 years of service with the carrier, was arbitrarily removed from service on May 9, 1956.

On this same day (May 9, 1956) the claimant was cited to appear in the office of the general foreman for investigation at 10 A.M. Friday, May 11, 1956. Copy of citation is submitted herewith and identified as Exhibit A.

On May 11, 1956 investigation was held as scheduled, copy of which is submitted herewith and identified as Exhibit B.

On May 28, 1956 a letter of dismissal was issued from the office of the superintendent of South Louisville Shops as result of said investigation, copy of which is submitted and identified as Exhibit C.

This dispute has been handled with all carrier officials, including the highest officer of the carrier, designated to handle such disputes, all of whom have declined to make satisfactory settlement.

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

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 Vinson 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.

Carman Sam M. Vinson was given a fair hearing. His discharge was not arbitrary, unreasonable or unjust. His conduct and language to his Gang Foreman, Frank L. Peak, amounted to threats of violence, and a refusal to carry out orders. He admitted calling his Gang Foreman a damn liar, and further that he told his Gang Foreman that it was a wonder that he hadn't knocked the hell out of him, as he is high-tempered and it gets on his nerves for a man to accuse him of something that he is not guilty of.

Sometime after this incident during the investigation, the Claimant, Vinson, repeated the said threats that he had made to his Gang Foreman, Frank L. Peak, before other supervisory employees of the Carrier, when he stated, again referring to his Gang Foreman, that "I should have mashed his skull in, and if it ever happens again, I'll beat hell out of him."

Such threats, actions and attitudes cannot be tolerated of employees if management expects to carry out its duties and obligations.

In accordance with the record, the Claimant was also insubordinate when he did not carry out his Gang Foreman's orders to help get the said second set of wheels.

There was no prejudice of bias disclosed on behalf of the Carrier.

In view of the above, this Board will not attempt to substitute its judgment for that of Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1958.

DISSENT OF LABOR MEMBERS TO AWARD 2897

The conclusions of the majority in Award 2897, Docket 2478, are erroneous. The majority fails to give fair consideration to agreement of September 1, 1943 as amended. This was not a proper case for suspension of the claimant on May 9 (Rule 34) and the record does not support the unjust and excessive penalty assessed. We dissent.

/s/ R. W. Blake

/s/ T. E. Losey

/s/ C. E. Goodlin

/s/ E. W. Wiesner

/s/ J. B. Zink