

**Award No. 2955**

**Docket No. 2797**

**2-KCT-CM-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Carmen)**

**KANSAS CITY TERMINAL RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement R. D. Cooper, Sr., was unjustly withheld from the service when the other employes involved in the same charges were reinstated to service and he was refused the same consideration.

2. That accordingly the carrier be ordered to reinstate the aforesaid carman with seniority rights unimpaired.

**EMPLOYEES' STATEMENT OF FACTS:** R. D. Cooper, Sr., hereinafter referred to as the claimant, entered the service of the Kansas City Terminal Railway, hereinafter referred to as the carrier, August 22, 1937, as a carman, at which position he worked until dismissed November 29, 1956.

On November 29, 1956 Master Mechanic W. M. Lehman directed letters to the claimant, and Lloyd Weaver, carman, Henry J. Rhodes, car cleaner and Ernest Dickerson, electrician, advising them that they were discharged from the service of the carrier, as of that date due to alleged violation of Rule 13 of the Carrier's Rules for Guidance of Employees, effective as of October 1, 1952, and that they were participating in a dice game on the lower floor of the West End Yardmaster's Building, Union Station, at 5:55 P.M. November 29, 1956, a copy of which is submitted herewith and identified as Exhibit A.

On December 1, 1956, General Chairman George W. Herman directed a letter to Master Mechanic Lehman, requesting that a formal investigation be held by a properly designated officer of the carrier, as provided for in Rule 28 of the current agreement, a copy of which is submitted herewith and identified as Exhibit B.

The hearing was held at 1:00 P.M. Saturday, December 8, 1956, a copy of which is submitted herewith and identified as Exhibit C.

employees involved in the same charges were reinstated to service . . ." We do not understand this portion of the organization's claim and trust that it will be more fully explained in their briefs submitted to your Board. We will, however, state for the record that each case involving discipline is considered and judged on its individual merits. And such method is well founded for the reason that in matters so important to the employees' welfare nothing should influence or bias the carrier's judgment. Such method was used in the instant case and its purpose fulfilled.

In the light of all the facts and all the circumstances it is clear the claim in this dispute is not supported by the agreement and is without merit and should be denied in its entirety.

**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.

There is ample evidence in the record that the claimant on November 29, 1956, violated Rule 13 and that his conduct was of such a nature as to warrant dismissal.

The claimant does not complain because he was dismissed from the service, but rather he complains that he was not reinstated to the service, and that he was refused the same consideration that three other employes received, who were reinstated.

The carrier having dismissed the claimant as provided in Rule 28 and in strict compliance therewith, has the right thereafter in its sound discretion to extend leniency or to refuse to do so.

From our study of the record it does not appear that the carrier acted unfairly, arbitrarily, or abused its discretion.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1958.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 2955

It is stated in the findings that the carrier "in its sound discretion" has the right to extend leniency or to refuse to do so. We wish to point out that discretion is a liberty or privilege allowed within the confines of right and

justice; to decide and act in accordance with what is fair and equitable. Discretion should not be wilful or arbitrary. Carrier's Exhibits A, B, C, and D (attached to Carrier's Exhibit "A") establish that the claimant and three other employees were discharged on the same date for an alleged violation of the same rule. These four employees were subject to the same collective bargaining agreement and should all have been given the same treatment in a matter of discipline. However, the claimant was not reinstated and the other three employees were returned to service. Since all were at fault in an equal measure the claimant has been discriminated against.

It is evident from the record that the claimant was not reinstated because of antagonism or enmity toward him on the part of those who were responsible for reinstating the other three employees. Such arbitrary action as this is tantamount to placing the claimant on a black-list.

The appeal procedure is for the purpose of protecting the rights of employees and failure to do so as was done in the present instance frustrates the fundamental purposes of collective bargaining.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner