Award No. 3110
Docket No. 2870
2-CNO&TP-EW-59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT. A. F. of L.-C. I. O. (Electrical Workers)

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Electrician C. C. Williams, Jr., was unjustly dismissed from the service of the carrier at its Citico Shop, Chattanooga, Tennessee, on May 17, 1957.

2. That accordingly the Carrier be ordered to restore the aforementioned Electrician to service on his former position with all service rights and vacation rights unimpaired and compensate him for all time lost retroactive to May 17, 1957.

EMPLOYES' STATEMENT OF FACTS: Electrician C. C. Williams, Jr., hereinafter referred to as the claimant, was first employed by the carrier as an electrician apprentice at its Ferguson Shops, Somerset, Kentucky, on April 30, 1943. Inasmuch as he was inducted into the armed forces, he was given a seniority date of April 30, 1947, as an electrician at this shop. On February 3, 1948, was transferred under the provisions of the current agreement to the carriers' Citico Shops, Chattanooga, Tennessee, as an electrician. He has been in continuous service at this shop from date of transfer, until May 17, 1957, working as an electrician and as electrician inspector. His regular assignment being five days per week on the third shift—hours of from 11:00 P. M. to 7:00 A. M.

Claimant reported for duty at 11:00 P. M. on the night of May 10, 1957, and was assigned by Electrician Foreman G. D. Henry to the work of disconnecting and connecting the auxiliary generator on Diesel-electric Unit No. 6902. This the claimant proceeded with until he was assigned to other work by Assistant Roundhouse Foreman C. L. Northcutt. The records reveals that at the time that Mr. Northcutt approached the claimant in connection

is something that cannot be proved. However, the situation has cleared and the attitude among the men is far better since he has been out of service.

Following is Mr. Williams' service record since employed as laborer at Somerset, Kentucky, on May 12, 1942:

Laborer	5-12-42	to	8-12-42—Somerset, Ky.
Machinist Helper	8-13-42	to	4-30-43—Somerset, Ky.
Electrician Apprentice ..	4-30-43	to	5- 4-47—Somerset, Ky.
Electrician Apprentice ..	5- 5-47	to	6- 6-47—Chattanooga, Tenn.
Electrician Apprentice ..	6- 7-47	to	1-21-48—Somerset, Ky.
Electrician	2- 3-48	to	5-17-57—Chattanooga, Tenn.

The Master Mechanic as well as General Foreman and supervisors directly over the claimant before his dismissal do not feel that he is a satisfactory or co-operative employe and therefore is not desirable, and they would not recommend returning him to service and I concur in their decision."

Having been dismissed for just and sufficient cause, claimant's employment relationship has been severed and there is no basis for his being rehired except as a matter of leniency. That matter being solely in the hands of management, the Board has no authority to extend leniency to claimant. He has no contract right to reemployment.

CONCLUSION

It has been shown that:

(a) Carrier's action was strictly in compliance with agreement rules.

(b) Charges against the claimant were proven and he was dismissed for just and sufficient cause.

(c) The principles of prior awards of all four Divisions of the Adjustment Board support carrier's position.

(d) There is no basis for carrier to extend leniency and the Board cannot do so.

The Board, having before it evidence showing that claimant was guilty as charged, and that the agreement was strictly complied with, cannot extend leniency in such circumstances and has no alternative but to deny the claim here presented.

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.

In view of the facts and circumstances attending the assignment of claimant from Diesel unit 6902 to other duties, we think the record lacks substantial evidence that claimant negligently failed to inspect the auxiliary generator and therefore conclude that he was dismissed from service without just and sufficient cause contrary to Rule 34. Accordingly, Electrician C. C. Williams, Jr., shall be restored to service in the position held by him on May 17, 1957 with all service and vacation rights unimpaired and compensated for time lost since May 17, 1957 less his earnings from other sources since said date.

AWARD

Claim sustained in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1959.