

Award No. 3154
Docket No. 3033
2-CUT-SMW-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)**

CINCINNATI UNION TERMINAL COMPANY, THE

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Sheet Metal Worker Herman E. Stephens of Cincinnati, Ohio was unjustly dealt with when he was dismissed from service January 28, 1958 for a minor delay on NYC Diesel 4401.

2. That accordingly the Carrier be ordered to:

(a) Restore the aforesaid sheet metal worker to service with seniority rights unimpaired.

(b) Compensate the aforesaid sheet metal worker for vacation period allotted him January 31 to February 4, 1958, inclusive.

(c) Compensate the aforesaid sheet metal worker for wages lost thereafter, retroactive from February 7, 1958 (excluding rest days) until restored to service.

EMPLOYEES' STATEMENT OF FACTS: Mr. Herman E. Stephens, hereinafter referred to as the claimant, was employed as a sheet metal worker on third trick in the enginehouse October 29, 1953, and continuously worked as such until October 21, 1955 at which date he was dismissed from service for habitual absenteeism, which was created by his aged father living in Somerset, Kentucky alone with his aged mother, and was re-instated December 1, 1955 with seniority unimpaired, and worked continuously thereafter on third trick in enginehouse as a sheet metal worker until January 28, 1958 at the end of tour of duty, which the claimant was dismissed from service for a thirteen (13) minute delay on passenger train diesel locomotive NYC 4401, the

mechanic to crawl under and lie on his back and tighten the loose bolts, resulting in a thirteen minute delay to a crack streamline train.

When asked why he did not notify his supervisor that he had not properly performed his duties he replied—"It was just a mistake of mine" although he had previously told his supervisor the engine was O.K., see Page 4 of the investigation.

On Page 6 of the investigation the claimant's representative took exception to reading claimant's record into the investigation.

Let us review the claimant's record:

- 10-29-53 Employed as a pipefitter
- 9- 3-54 Reprimand—Habitual absenteeism and failing to notify foreman
- 10-21-55 Dismissed—Habitual absenteeism
- 12- 1-55 Reinstated with seniority—no pay for time lost
- 9-13-57 Reprimand—Habitual absenteeism
- 1-28-58 Dismissed—(Above case)

There were no questions asked by the carrier concerning his record. Claimant was found guilty as charged and his past record was reviewed to determine the severity of discipline. The company endeavored to make a good employe out of claimant. In approximately five years he had two reprimands and two dismissals.

Claimant was correctly charged, given a fair and impartial hearing, found guilty and dismissed from service. Carrier's discipline administered was not arbitrary or unfair and is based on facts brought out in the investigation.

Carrier respectfully requests the Second Division to deny claim 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.

Parties to said dispute were given due notice of hearing thereon.

Rule 26(a) provides in part that "if stenographic report of investigation is taken the employe and the committee shall be furnished a copy". Claimant made an affidavit that no copy was furnished to him. Carrier asserts it was handed to him by Foreman Reddington at 5:45 A. M., January 20, 1958. That is obviously impossible because the investigation did not commence until 8:30 A. M. on that day. Accordingly, we find that the carrier violated the agreement and the discharge cannot be sustained.

AWARD

Claim sustained.

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

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 25th day of March, 1959.