

Award No. 3166
Docket No. 3041
2-GM&O-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**GULF, MOBILE AND OHIO RAILROAD COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman J. D. Cullom was unjustly discharged from service on June 14, 1957.
2. That accordingly the Carrier be ordered to restore the aforementioned Carman to service with seniority and vacation rights unimpaired and compensated for all time lost retroactive to June 14, 1957.

EMPLOYEES' STATEMENT OF FACTS: Carman J. D. Cullom, hereinafter referred to as the claimant, was employed by the Gulf, Mobile and Ohio Railroad, hereinafter referred to as the carrier, on date of January 22, 1946 as carman apprentice. After serving the necessary time as apprentice, he was employed as carman as of July 27, 1950. He worked in that capacity up to June 9, 1957 when he was discharged from service of the carrier. His assignment at the time was 11:00 P. M. to 7:00 A. M. in train yard.

On the night of June 9, 1957, General Car Foreman Hubbell found the claimant asleep in the inspector's shanty alongside the train yard tracks. He immediately suspended claimant from service pending investigation which was held June 13, 1957 at which time claimant was notified that he was permanently discharged from service of the carrier.

Stenographic report was taken of the transcript of the investigation. Copy of this investigation report was not furnished to the local committee until about 4:30 P. M. on August 9, 1957, 57 days after the investigation was held. Copy was furnished at this time only because claim for reinstatement

subsequent like offenses. The offense for which the claimant stands dismissed is the second of its kind in the year 1957, the first having been committed on January 16, of that year.

At about 1:30 A. M., January 16, General Car Foreman Hubbell found Claimant J. D. Cullom and another car inspector (Daily) asleep during their tour of duty while Helpers Smith and Shanrock were inspecting and oiling the cars of a banana train. They were orally reprimanded and warned against a repetition of such an offense, and this was recorded as a part of their personal records.

Carrier submits the proposition that,

- (a) Claimant J. D. Cullom was dismissed for just and sufficient cause and after a procedure that was in accordance with Rule 36.
- (b) The personal record of Claimant J. D. Cullom is such that the measure of discipline applied should not be reduced, and,
- (c) The instant claims are without merit and 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.

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

This claim for reinstatement is based on the employes' position that the company neglected to provide the committee with a transcript of the investigation which was held four days after the offense. The carrier witness deposes that three copies of the transcript were delivered on the day following the investigation, and that when the committee denied receiving them, additional copies were provided.

It seems to appear that the delivery of June 14, may have been misplaced, but this fact if true, did not operate to deny the claimant the benefits of the rule. The committee could have and did have the transcript upon request.

We note the absence of any transcript in the submission before us which leaves us with no facts upon which to make findings or decide whether there has been either compliance with or violation of the governing rules.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3166

The majority states "We note the absence of any transcript in the submission before us which leaves us with no facts upon which to make findings or decide whether there has been either compliance or violation of the governing rules." The majority then denies the claim. If the majority felt that there were no facts the case should have been remanded as no just determination can be made without facts. The findings and award do not denote impartial consideration of the instant case.

James B. Zink

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner