

Award No. 3280
Docket No. 2882
2-CMStP&P-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 award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrician Helper Clarence Eggert was unjustly dismissed from service on March 9, 1956.
2. That the Carrier be ordered to reimburse Electrician Helper Clarence Eggert for all time lost retroactive to March 9, 1956 as Electrician Helper and Crane Operator.
3. That the Carrier had failed to comply with the provisions of Article 5, Section (a) of the August 21, 1954 National Agreement.

EMPLOYEES' STATEMENT OF FACTS: Electrician Helper Clarence Eggert, hereinafter referred to as the claimant, was employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the Carrier, at its Diesel House Shop in Milwaukee, Wisconsin, with the seniority date of March 28, 1951.

Under date of March 7, 1956, Master Mechanic H. R. Drew directed a letter to the claimant advising him to appear in the office of the master mechanic at 9:00 A. M. March 9, 1956, for formal investigation on a charge set forth in the letter, a copy of which is submitted herewith and identified as Exhibit A. The formal investigation was held as scheduled and submitted herewith and identified as Exhibit B, is a copy of the hearing transcript. Under date of March 9, 1956, a letter was directed to the claimant by Master Mechanic H. R. Drew advising him he was dismissed from the

POSITION OF CARRIER: It is the position of the carrier that the claim in behalf of Electrician Helper Clarence Eggert for time lost between March 9, 1956 and August 13, 1956 was NOT at any time presented to the roundhouse foreman who was the officer of the carrier authorized to receive same; therefore, the claim is barred under the provisions of Article V of the agreement of August 21, 1954, and we respectfully request that the claim be denied accordingly.

Without in any way waiving aside our position as expressed in the previous paragraph, we wish to direct attention to the fact that the responsibility of the claimant in connection with the charges preferred against him was fully and properly developed in the investigation held on March 9, 1956, that there was full compliance with the schedule rules in connection with the dismissal, and on the basis of merit alone, there is no justification whatever for the monetary claim, in fact, the reinstatement of the claimant on a leniency basis, after an elapse of less than 6 months, represents extremely fair handling on the part of the carrier officers and there could have been no proper basis for disturbing the carrier's dismissal action.

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.

Clarence Eggert was discharged on March 9, 1956 for exceeding his lunch period by approximately 45 minutes. (The charge was initiated by the Master Mechanic at Milwaukee, who brought the charge, conducted the hearing and imposed the penalty.) The local chairman notified the Master Mechanic that his disposition of the case was unsatisfactory and appealed to the District Master Mechanic on May 7 to reinstate Eggert and compensate him for time lost. The carrier disallowed the claim on August 3, 1956 but on August 13 reinstated Eggert on what it states was a leniency basis. Thereafter, the monetary claim was progressed on the property and finally declined by the chief designated officer of the carrier under date of March 19, 1957 who maintained the discipline was warranted and that the claim had not been presented in the first instance to the Round House Foreman, as provided in the carrier's communication of December 1, 1954 which implemented Article V of the August 21, 1954 Agreement.

Article V, Section 1 (a) of the August 21, 1954 Agreement provides that claims or grievances must be presented in writing to the designated officer of the carrier within 60 days from the date of the occurrence and, if disallowed, the carrier shall give notice thereof within 60 days from date the claim is filed, otherwise the claim shall be allowed as presented.

As noted, the charge, hearing and discipline of Eggert were handled by the Master Mechanic, who is an officer superior to the Round House foreman. In that procedure the carrier by-passed the Round House foreman and thereby in effect waived its contractual requirement that this claim be

initially presented to him. Under the circumstances, submission to the Round House foreman of a claim for reinstatement and payment for time lost, would have been an idle and useless act and was unnecessary. Since the Master Mechanic discharged Eggert, the proper step for seeking relief from the carrier's action was to appeal to the District Master Mechanic which was done by the claimant within the required time. We think the claimant satisfied the purpose and intent of Article V. The claim for reinstatement and payment for time lost was seasonably and properly presented to the carrier and the carrier was required to disallow it in writing within 60 days from May 7, 1956 if it desired to do so. The claim was disallowed more than 60 days after it was filed, under the provisions of Article V, Section 1 (a) of the August 21, 1954 Agreement the claim must be allowed. The claim for actual loss of wages from March 9, 1956 to August 13, 1956 is allowed minus the amount of outside earnings during that period, if any, as contemplated by Rule 36 of the applicable agreement.

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 24th day of June 1959.