

Award No. 3462

Docket No. 3200-I

2-MP-I-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy, when award was rendered.

PARTIES TO DISPUTE:

LORENZO D. EDINGTON, LABORER

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE: The petitioner requests that he be reinstated by the Missouri Pacific Railroad Company with seniority rights unimpaired, and all back pay from August 13, 1957 to date hereof. This claim made herein has been handled in the usual manner up to and including the Chief Operating Officer of the carrier designated to handle such disputes, in this case being Mr. B. W. Smith, Chief Personnel Office, Missouri Pacific Lines, Missouri Pacific Building, St. Louis, Missouri. This award is desired by virtue of the provisions of the Railway Labor Act approved June 21, 1934.

EMPLOYEE'S STATEMENT OF FACTS: The carrier, the Missouri Pacific Railroad Company, contends that the employee failed to report for work and protect his assignment on Tuesday, August 13, 1957, at 8:00 o'clock A. M. The carrier's original investigation was held in Omaha, Nebraska, in the office of the general car foreman on August 28, 1957 at 10:00 o'clock A. M. and was duly noted in writing and a photostatic copy of said hearing, consisting of six (6) pages of questions and answers is submitted herewith and identified as employee's Exhibit A.

As a result of this hearing, Mr. Lorenzo Edington was removed from duty and the carrier has refused to return said employee to duty and after referring the matter to the chief operating officer of the carrier designated by said carrier to handle such dispute, said carrier still refuses to reinstate said employee with seniority rights unimpaired and to pay said employee all back wages.

POSITION OF EMPLOYEE: Mr. Lorenzo Edington, the employee, has been employed by the carrier herein as of Tuesday, August 13, 1957, as a laborer for a period of sixteen (16) years. He is a negro.

It is the contention of the employee that on the morning in question he woke up with a pain in his back and went over to his sister's house and asked if she would call the general foreman's office to notify him that he was sick. The employee also asked his sister, Willa Mae Anthony, to ask the general foreman's office to contact Elmer Darby, 2618 Decatur Street, Omaha, Nebraska, an employee of the carrier and have him pick up a doctor's order

not make any contention for any pay while I was held out of Service for Investigation.

/s/ Lorenzo Edington

April 3, 1956 Executed wage assignment in favor of Finance Company contrary to instructions.

Discipline assessed: General Foreman handled matter personally with claimant and account straightened out.

June 7, 1957 Requested permission to execute wage assignment in favor of Finance Company contrary to instructions.

Discipline assessed: Warned that such action is not permissible.

Aug. 22, 1957 Finance Company served wage assignment on claimant.

Discipline assessed: No action taken on this count since claimant was discharged for failure to protect his assignment."

It is obvious from the above record that the supervision at Omaha have been most tolerant of claimant's conduct and have been more than fair. The repeated failure to protect his assignment and to keep his financial affairs in order are each sufficient grounds for discharge. The record shows that claimant has not appreciated the consideration extended to him in the past. The carrier must be able to depend on its employees to protect their assignments. Since claimant has habitually failed to protect his assignment and he has failed to respond to corrective measures, the carrier has no alternative but to discharge claimant in order to provide the efficient service required for successful operation of the property.

In conclusion, the carrier states that all of the requirements of Rule 9 of the applicable agreement were met, that substantial evidence was produced at the investigation which supports the charge that claimant failed to protect his assignment and that discharging claimant did not constitute excessive, harsh or unreasonable discipline in view of the serious dereliction of duty and claimant's unsatisfactory past record. There is no authority for this Board substituting its judgment for that of the carrier and taking upon itself the responsibility which properly rests with the carrier.

Although no specific relief is requested in the notice of intent filed on behalf of claimant, any request for reinstatement is not supported by the agreement and is entirely lacking in merit and, therefore, must 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.

Mr. Lorenzo D. Edington, claimant, was discharged by the carrier for failing to report for work on August 13, 1957. He also neglected (according to the carrier) to give notice to the carrier on his alleged illness.

This claim was processed on the property and after declining it as presented, Mr. B. W. Smith, Chief Personnel Officer agreed with the General Chairman that the claim could be referred back to the Division for further handling on a leniency basis. After processing same on a leniency basis, it was again denied.

Mr. Edington was employed by the carrier for a period of sixteen (16) years as a laborer. He was represented before this Board by his attorney, Mr. George O. Kanouff, who admits that the claimant was advised of his rights on the morning of the hearing, but that he did not appreciate the seriousness of said charge or he would have availed himself two witnesses, Willie Mae Anthony, his sister, and Elmer Darby, a Coach Cleaner for the carrier.

Willie Mae Anthony states by affidavit that she called the carrier and reported the illness of the claimant as she had done before, the prior calls were admitted and accepted by carriers' witness. Mr. Darby in his affidavit says that he picked up a slip authorizing Lorenzo Edington to go to the company doctor, from the clerk or engine dispatcher, but due to his grandfathers illness, he had to leave on the afternoon train for Louisiana and upon his return five or six days later, he gave the authorization to Mr. Edington.

The carrier properly calls to the attention of this Board that these Exhibits were filed too late to be considered by us. We must agree that discipline must be based on the record made at the investigation. Although we are unable to give consideration to the merits of this case, we do feel that we should call the further attention of the carrier to the 16 years of service given to them by this claimant. Their highest ranking officer must have agreed that this penalty was too severe, or he would not have assented to remand it to the local Division, to be reconsidered on a leniency basis.

This Division lacks authority to order the reinstatement of the claimant because his original claim as processed on the property is not before us for consideration, and the substituted claim (leniency basis) that we have now for our consideration, lacks sufficient proof for us to sustain it. However, we do recommend to the carrier, that honest effort and consideration be given to the possible reinstatement of the claimant, so that this unjust discipline may be corrected.

AWARD

Claim dismissed as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May 1960.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3462

In this Award the majority found that the discipline assessed was excessive and the carrier's highest ranking officer admitted the penalty was too severe; however, they failed to rectify the injustice inflicted upon the claimant.

We submit the majority evaded their responsibility when they failed to dispose of the dispute in this docket in accordance with the facts of record. We must dissent from this Award.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
James B. Zink