

Award No. 3478

Docket No. 3241

2-L&N-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A.F.L.—C.I.O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That the Carrier's dismissal of Carman Gerson Miles and removal from service at the close of his shift on April 11, 1958, was not authorized by the current agreement.

2—That accordingly the Carrier be ordered to restore him to service with all seniority rights unimpaired and with pay for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Gerson Miles, hereinafter referred to as the claimant, was employed by the carrier at Montgomery, Alabama as carman helper. On June 2, 1943, after first being employed as shop laborer on November 15, 1941, was promoted to carman with a seniority dating of May 20, 1957. The claimant worked in the capacity of carman, regularly, with a second shift assignment in the Montgomery Train Yards since his promotion.

Under date of March 24, 1958, the carrier's general foreman charged the claimant with being under the influence of intoxicants while on duty and on the company's premises at 4:35 P. M., March 22, 1958. A copy of the charges are submitted herewith and identified as employes' Exhibit A.

On April 1, 1958, an investigation of these charges was held in the office of the carrier's general foreman at Montgomery, Alabama. A copy of the transcript is submitted herewith and identified as employes' Exhibit B.

On April 15, 1958 the carrier's general foreman wrote the claimant, confirming conversation relative to him (claimant) being relieved from service of the company at the close of his shift on April 11, 1958.

The agreement affective September 1, 1943 as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that there is nothing, whatsoever, shown in the transcript of investigation to substantiate the charges placed against this claimant or to justify the unwarranted dismissal from service.

" * * * It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (Second Division Award 1323, Referee Doaldson.)

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.

Having given careful consideration to all the circumstances involved, including claimant's length of service, we think the time already lost is sufficient penalty for the offense committed and that permanent removal from service would constitute excessive discipline.

AWARD

Claimant shall be reinstated with seniority rights unimpaired but without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago Illinois, this 20th day of June 1960.