

Award No. 3493
Docket No. 3027
2-C&EI-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES'
DEPARTMENT, A.F.ofL.—C.I.O. (Carmen)**

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, Carman Richard E. Johnson was unjustly discharged from service on February 20, 1957.

2. That accordingly, the carrier be ordered to compensate him for all wage loss suffered by him during the period of February 20, 1957, to May 2, 1957.

EMPLOYES' STATEMENT OF FACTS: Carman Richard E. Johnson, hereinafter referred to as the claimant, is employed as such by the carrier in its Oaklawn Freight Car Shop, Danville, Illinois, since January 10, 1953, after completing his carman apprenticeship on this same railroad. His assigned hours are from 7:00 A. M. to 3:30 P. M., thirty minutes for lunch.

On February 20, 1957, the carrier notified the claimant by letter, that he was discharged from service of the C&EI Railroad at 9:00 A. M., this date — evidence of which is submitted herewith and identified as employees' Exhibit B.

On February 21, 1957, an investigation was held in the office of the freight car foreman, evidence of which is submitted herewith and identified as employees' Exhibit A.

On February 26, 1957, the claimant received a letter from the general freight car foreman, Mr. H. M. Hughes, advising him that he was being removed from service of the Chicago and Eastern Illinois Railroad, evidence of which is submitted herewith and identified as employees' Exhibit C.

On March 12, 1957, the local chairman, Mr. C. A. Baker, received a letter from Mr. H. M. Hughes, general freight car foreman, denying the request made by the local chairman, which is being submitted as employees' Exhibit D.

On March 18, 1957, a conference was held in the office of the master car builder, Mr. D. L. Cronkhite and the local chairman, at which time the local chairman requested that the claimant be restored back to service with all rights due him, with the understanding that compensation for wage loss would be

was instructed as to the proper type of foot wear — with specific instructions not to wear rubber boots. On both occasions claimant sought to contest the point and complied only after he was warned that he would be sent home if he appeared in rubber boots. Despite these two previous warnings of a most precise and specific nature, claimant persisted in wearing rubber boots — and when finally on February 20, 1957, his foreman finally did instruct claimant to go home to change his shoes he asserted he was not going to have a foreman telling him what to wear. Claimant was insubordinate when after being told not to wear rubber boots, he nonetheless wore them to work a second time. After a further warning, he was insubordinate when he wore them to work a third time, and was further insubordinate when he told the foreman he would not comply with his instructions in the matter.

Claimant was afforded a fair and impartial investigation in accordance with the agreement rules. The evidence adduced at the investigation shows conclusively that claimant was guilty of violating the rules and was insubordinate in refusing, after repeated warnings, to comply with the specific instructions of his foreman that he was not to wear rubber boots. These instructions were within carrier's discretion, were not arbitrary nor unreasonable; and were designed for claimant's safety and protection against a crippling foot injury.

The discipline assessed was not in abuse of carrier's discretion and claim for time lost is therefore without merit.

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.

Following an investigation held February 21, 1957 claimant was removed from service for violation of safety rules and insubordination. He was reinstated on a leniency basis May 2, 1957. It is claimed that he was improperly discharged, and compensation is sought for the time he was out of service.

The evidence revealed that claimant consistently resisted the supervisor's efforts to carry out his responsibility for maintaining safety precautions in the execution of the work on the property. In view of the facts and circumstances shown of record we are not able to say that the carrier's action was arbitrary or capricious.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1960.