

Award No. 3528

Docket No. 3483

2-NP-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the investigation accorded Communication Lineman J. M. Courneya, was unfair, improperly conducted and the time limit for holding this hearing was violated by the Company.
2. That the discipline administered (dismissal from the service of the Company) was unjust.
3. That accordingly the Northern Pacific Railway Company be ordered to reinstate Communication Lineman J. M. Courneya with seniority and vacation rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Communication Lineman J. M. Courneya herein after referred to as the claimant, was employed by the Northern Pacific Railway Company, hereinafter referred to as the carrier, on January 6, 1947, as a groundman, promoted to communication lineman on November 1, 1947, and held the position of communication lineman with headquarters at Auburn, Washington from February 11, 1958 until the date of his dismissal from the service of the carrier June 20, 1958.

The assigned territory of the claimant was:

"Martin to Auburn, Auburn to Woodinville, Auburn South Cable Pole to and including Reservation Terminal Pole and Cable House, Enumelaw Leg, Palmer Junction to Enumelaw, Renton Branch, Kirkland Loop, Seattle and Auburn Local Circuits."

Under date of May 22, 1958, the claimant was notified to report to the office of the assistant superintendent of communications at Seattle, Washington at 10:00 A.M. May 26, 1958, for an investigation covering violations of the operating rules and general instructions.

The investigation was postponed at the request of the claimant until June 6, 1958.

The claim covered by this docket should be denied in its entirety.

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.

After formal investigation of eight charges of rule violation claimant was dismissed from service on findings: (1) that claimant had no regard for the safety of himself, other company personnel or equipment, and (2) that he had been insubordinate in failure to comply with authority in the submission of daily work reports and other items of correspondence.

As to the second finding, there was no denial of repeated failure by claimant to make out daily work reports as specified in the Instruction Manual as well as failure promptly to answer inquiries requesting immediate answer. The only tendered excuse was lack of time due to his work as communication line-man.

As to the first finding, the evidence as to the facts on which it was based was in many respects unsubstantial, as was the evidence as to lack of knowledge to bar the running of the time limit rule.

On the record substantial penalty was justified but we think that permanent dismissal from service was excessive and arbitrary and that claimant should now be reinstated with seniority and vacation rights unimpaired but without pay for time lost.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July, 1960.