

Award No. 3623

Docket No. 3133

2-KCT-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement car cleaner Henry J. Rhodes was unjustly suspended from service for five (5) regularly assigned work days beginning September 9 and ending September 13, 1957.

2. That accordingly the carrier be ordered to compensate him for the wage loss on September 9, 10, 11, 12 and 13, 1957.

EMPLOYES' STATEMENT OF FACTS: Car cleaner Henry J. Rhodes, hereinafter referred to as the claimant, has been regular employed by the carrier at Kansas City, Mo. since August 20, 1946. Under date of August 2, 1957 the claimant was notified to appear for a hearing at 10:00 A. M. August 12, 1957.

Hearing was held on August 12, 1957. A copy of the hearing is submitted herewith and identified as Exhibit A. Under date of August 30, 1957 the claimant was notified by letter that he was being suspended from service for five (5) working days effective as of September 9 to 13th, inclusive, copy of which is submitted herewith and identified as Exhibit B.

This dispute has been handled in accordance with the provisions of the existing agreement effective July 1, 1936 as subsequently amended, up to and with the highest designated carrier official to whom such matters are subject to be appealed, with the result that this official declined to adjust the dispute.

POSITION OF EMPLOYES: It is submitted that when the charge against claimant, as follows is considered:

“* * * investigation to determine the facts and place responsibility for your alleged violation of Rule 13 of the General Rules for Guid-

It is our position that the discipline assessed Claimant Rhodes is predicated upon the clear facts brought forth at a fair and impartial investigation proving beyond doubt his guilt of violation of Rule 13. We, therefore, respectfully petition your Board to deny the claim.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

After an investigation hearing, claimant was suspended for five days for violation of Carrier's Rule 13, General Rules for Guidance of Employees, by engaging in a verbal altercation with a Wabash Railroad Superintendent, incident to claimant servicing a car in a Wabash train at the Kansas City Union Station on July 16, 1957. The employees maintain that claimant was disciplined without just and sufficient cause.

We have carefully reviewed the transcript of the testimony given at the hearing and find that claimant received a fair and impartial trial and that the carrier's decision is supported by the greater weight of the evidence.

Rule 13 requires that employees display civil, mannerly deportment in their dealings with the public, and that they must not enter into altercations with any person, no matter what provocation may be given.

Several witnesses testified to the effect that claimant exhibited an offensive and uncivil attitude toward the Wabash representative and in more than one instance told him to keep his mouth shut and that claimant's foreman was the only person entitled to tell him what to do. While claimant denied making these statements, the weight of the evidence to the contrary warranted the disciplinary action taken by the carrier. We find, therefore, that this claim lacks merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 9th day of January, 1961.