Award No. 3632

Docket No. 3326

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Mr. C. M. Stafford and Mr. M. E. Houchin, Car Inspectors, were unjustly dismissed from the service of the Missouri Pacific Railroad Company on August 18, 1958.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to reinstate both employes to service with pay for time lost, including vacations due and any which would have been earned, and also that they be reinstated with seniority rights unimpaired.

EMPLOYES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, has maintained a rip track (shop) at Hoisington, Kansas for many years, but more recently a majority of the employes were furloughed and the shops closed with the exception of a few carmen mechanics who were retained as car inspectors.

Mr. C. M. Stafford and Mr. M. E. Houchin, hereinafter referred to as the claimants, were working as car inspectors, performing inspection work on trains as well as making repairs to cars set out from trains. In addition, they were required to perform diesel work on their shift. Claimant Stafford has been employed by the carrier at Hoisington, Kansas for a period of 37 years and is and has been local chairman at that point for several years. Claimant Houchin has been an employe of the carrier for 36 years and, as noted, both claimants have long service records with the carrier and are very familiar with the work and practices at Hoisington.

After working at Hoisington for a period of 37 years and 36 years respectively, both claimants were cited on August 5, 1958 to appear for formal investigation on August 12, 1958, at 8:30 A. M., and the employes herewith refer your Honorable Board to employes' Exhibit A which is Master Mechanic Daniel's letter of citation addressed to both claimants. The investigation was

or arbitrary attitude on the part of carrier's responsible officers. It is the announced policy of your Board not to substitute its judgment for that of the carrier in matters of discipline. Award No. 1089. There is no reason for disturbing the decision of the carrier in this dispute.

We point out that the seriousness of the offense involved here is such that we do not believe that your Board need consider claimants' past records. The offense, itself, which involves moral turpitude is more than sufficient justification for dismissal from service and it is not necessary to find previous acts of misconduct to justify the discipline assessed. Conversely, previous good conduct cannot excuse stealing. In this case, your Board need go no further than a consideration of the offense with which claimants were charged because the offense itself justifies the action taken. The carrier finds nothing in the past record of either claimant which affords any reason for extending leniency.

This Board does not condone theft. As stated in Award No. 4855 of the Third Division (Referee Edward F. Carter), "The Carrier is not required to retain people in its employ who have not been faithful to their trust." We call particular attention to Award No. 1756 of this Division. There an electrician claimed time on his time card for work not performed. After finding the claimant guilty of the charges against him, the Board found that:

> "The offense committed by this claimant consisted of obtaining eight hours' pay by false pretenses and a fraudulent attempt to secure twelve hours at overtime rates. This involves moral turpitude. The carrier has a right to expect its employes to be honest whether they are strictly supervised or not. For the Board to restore an employe's position after he has been apprehended in defrauding the carrier is not justified. Employes make mistakes the same as everybody else and this Board has restored employes when the discipline appears to have served its purpose. But when the offense involves moral turpitude, the carrier and not this Board should determine whether the risks inherent in the reinstatement of such an employe are to be again assumed by the carrier."

See also Awards Nos. 6108 and 7423 of the Third Division.

In Third Division Award 7423, the Board said, "Since Carrier's conclusion of Claimant's guilt is supported by substantial evidence, and there is no other basis for disturbing its action in this case, we will deny the claim." The same decision is required here. The carrier states that this claim 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.

This is a discipline case. The carrier developed adequate evidence to support action against the claimants. In fact, the claimants conceded that they had quit work one half hour prior to the times indicated on their time cards.

The Board was not impressed by the claimants' defense. It is persuasive that the issue of a second lunch period was advanced as a last minute defense since Claimants C. M. Stafford and M. E. Houchin were or had been local officials of the organization and should have been fully aware of the accepted interpretations of Rules 2(D), 4(B) and 6. Rule 6 specifically denies a second lunch period such as here claimed.

The Board is reluctant to substitute its judgment for that of the carrier officers however we feel that under the circumstances in this case the penalty has served its purpose. The Board directs that Houchin and Stafford be reinstated with seniority and vacation rights unimpaired but with no pay for time lost.

AWARD

The claim is sustained as limited in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1961.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the interpretation was rendered.)

INTERPRETATION NO. 1 TO AWARD NO. 3632
DOCKET NO. 3326

NAME OF ORGANIZATION:

SYSTEM FEDERATION NO.2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

NAME OF CARRIER:

MISSOURI PACIFIC RAILROAD COMPANY

QUESTION FOR INTERPRETATION: Do the words in the findings of Award No. 3632, reading as follows:

> "The Board directs that Houchin and Stafford be reinstated with seniority and vacation rights unimpaired but with no pay for time lost"

and Award reading:

> "The claim is sustained as limited in the findings"

provide that the claimant be paid for vacation's due and earned?

Second Division Awards 1973 and 3308 were controlling upon the Board as we wrote "vacation rights unimpaired" into the findings of Award 3632. The Board contemplated that vacation compensation creditable to service rendered during the year of discharge (1958) would be received during the year of reinstatement.

The Organization's question must be answered in the affirmative.

Referee Wilmer Watrous, who sat with the Division as a member when Award No. 3632 was adapted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December 1961.

others were used in place of claimants and the names of the employes to whom allowances are to be paid. Moreover, it is probable that the carrier does not have records available to make such a determination. The Railway Labor Act contemplates not merely general conclusions, but precise and definite findings of fact and final and definite Board decisions capable of enforcement, and Article 5 of the November 5, 1954 Agreement further accentuates and spells out this requirement.

It has long been axiomatic with this Board that to fulfill its function of dispute settlement, a uniformity of interpretation of labor agreements is essential. For this interpretation to be the exact opposite of numerous other awards and contra to many court decisions involving the very same dispute, only serves to create further disputes involving the identical issue, and certainly it is out of step with the better reasoned awards on this question.

This interpretation does not advance any reasons for not following previous awards and court decisions. Therefore, it is apparent that the majority did not correctly read and comprehend the plain language of Article 5 of the November 5, 1954 Agreement. This inconsistent and erroneous interpretation is wrong, valueless as precedent, and in addition is of doubtful legal validity, and leaves the carrier in a real quandary.

For the reasons herein stated, we dissent.

P. R. Humphreys

H. K. Hagerman

D. H. Hicks

W. B. Jones

T. F. Strunck