

Award No. 3905

Docket No. 3822

2-IC-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Doyle when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O.
(Electrical Workers)**

ILLINOIS CENTRAL RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrician Helper Eugene Kulik was unjustly discharged from the Illinois Central Railroad service October 20, 1959.

2. That accordingly the Illinois Central Railroad be ordered to restore Eugene Kulik to service with unimpaired service rights and compensate him for all time lost since October 20, 1959.

EMPLOYEES' STATEMENT OF FACTS: Eugene Kulik, hereinafter referred to as the claimant was employed as an electrician helper by the Illinois Central Railroad hereinafter referred to as the carrier, and assigned to the Weldon Coach Yards, Chicago, Ill.

In a letter dated October 7, 1959, General Foreman L. R. Barron, charged the claimant and instructed him to be present at an investigation to be held on October 9, 1959.

Investigation hearing was held on October 9, 1959.

The trial officer designated by the carrier was General Foreman L. R. Barron.

In a letter dated October 20, 1959, the claimant was advised by General Foreman L. R. Barron, that he was found guilty as charged and was discharged from the service of the carrier effective October 20, 1959.

This dispute has been handled with the carrier officers designated to handle such matters, in compliance with the current agreement, all of whom refused to or declined to settle the claim.

properly substitute its judgment for that of Management in such matters, there must be a clear showing that the disciplinary action taken was without proper cause; that the Carrier's action was arbitrary, capricious, unfair and unreasonable."

An employe, such as the claimant in this dispute, has an obligation to his employer to protect his assignment. His absence from his post for a two-hour period without notifying his supervisor of his difficulty constitutes deserting a post of duty which is not a minor offense — see Awards 10688, 12938, 14621, 15892, and 16584, First Division. Further, his conduct since his dismissal from service leaves much to be desired in an employe. Subsequent to his dismissal he has expressed a defiant attitude toward the general foreman as well as the general master mechanic and has expressed an unwillingness to cooperate with his local supervisors. Because of his attitude, the carrier has denied his request for reinstatement on a leniency basis. Under such circumstances the Board is without authority to substitute its judgment for that of the carrier unless there is a clear showing that the disciplinary action taken was without proper cause. See Third Division Awards 8991 and 8675.

Claimant was accorded all rights and privileges under the discipline rule of the agreement, and he was given a fair and impartial trial. There is absolutely no basis for the employes' complaint that Mr. Kulik was unjustly discharged, and their request that he be restored to service with seniority he was tried.

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 waived right of appearance at hearing thereon.

The contention here presented is that the employe was unjustly discharged from the Illinois Central service on October 20, 1959. The charge upon which the dismissal was predicated was that the employe had failed to follow instructions as given by his supervisor and that he was away from his assigned place of work from 12:15 A. M. to 2:30 A. M.

There is no dispute as to that part of the charge that Kulik, the employe, was away from his post for a period of time on the day in question. There is a dispute as to the reason for it. Kulik maintained at the hearing that his absence was necessitated by illness. Evidence in support of the charge tends to disprove this justification. There is some dispute as to the exact length of the absence. According to Kulik's testimony and that of disinterested witnesses the absence was for a period in excess of one hour. There is evidence, however, in support of the finding that the absence exceeded two hours and we are not disposed to interfere with it.

Assuming, therefore, that there was an unjustifiable absence for a period in excess of two hours, the question remains whether the punishment was excessive. The justification of the Carrier for dismissing the claimant is that there was other past difficulty of the same type and that claimant had not

evidenced a desire to reform — that his attitude in negotiations leading to possible remission of the penalty did not favorably impress the Carrier. The evidence of past offenses is at best vague. It is informal testimony that other foremen had had similar trouble with this man. If it was sufficiently serious to deserve consideration, it should have been charged and presented formally. In the absence of such a showing we do not consider it necessary to consider it. The statements as to the man's attitude are equally vague and do not deserve consideration. In order for such evidence to receive consideration it should be in the form of specific statements or other tangible indications. Mere conclusions are insufficient.

We are of the opinion that the punishment was so disproportionate to the offense charged as to indicate prejudice and ill-will.

Dismissal from service notwithstanding that claimant had in excess of twelve years of service for the offense charged was excessive and arbitrary.

We are of the opinion that any penalty in excess of thirty days suspension would be arbitrary, capricious and would have to be set aside. Therefore, the penalty of dismissal must be set aside and a penalty of suspension for a period of thirty days substituted therefor. The claim must be sustained to that extent and this means that Kulik must be restored to service with full seniority rights and that he is entitled to be compensated for net loss of wages from a date thirty days after the effective date of the penalty until he is restored to duty.

AWARD

Claim denied in part and sustained in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1961.