Award No. 4030
Docket No. 3995
2-CMStP&P-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Machinist A. Schmitt was unjustly suspended from service on May 7, 1960 and dismissed from service on May 13, 1960.

2. That accordingly the Carrier be ordered to compensate Machinist A. Schmitt for all time lost beginning with May 8, 1960 and continuing through May 19, 1960.

EMPLOYES' STATEMENT OF FACTS: A. Schmitt, hereinafter referred to as the claimant is employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, at its diesel house shop in Milwaukee, Wisconsin.

Under date of May 7, 1960, District Master Mechanic A. W. Hallenberg directed a letter to the claimant advising him to appear in the locomotive department general office at 10:00 A. M. (DST) May 11, 1960 for formal investigation on a charge set forth in the letter, a copy of which is submitted herewith and identified as Exhibit A. The formal investigation was held as scheduled and submitted herewith and identified as Exhibit B, is a copy of the hearing transcript.

Under date of May 13, 1960, a letter was directed to the claimant by District Master Mechanic A. W. Hallenberg, advising him he was dismissed from the service of the carrier effective May 13, 1960, a copy of which is submitted herewith and identified as Exhibit C.

As stated, it is the position of the carrier that the responsibility of Mr. Schmitt in connection with the charges preferred against him was fully developed and his dismissal was warranted and we respectfully request that the carrier's action not be disturbed and the claim 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 waived right of appearance at hearing thereon.

This claim is identical with Award 4027 and requires the same disposition.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.

DISSENT OF LABOR MEMBERS TO AWARD NOS. 4027, 4028, 4029, 4030, 4031

Neither Rule 34 (a) nor Article V of the August 21, 1954 Agreement requires an employe to appeal from a superior to subordinate official of the carrier.

The majority holding "The claim was not presented in accordance with Rule 34 (a) within the time limited by Article V of the August 21, 1954 Agreement * * *" and "Not being a valid claim it is not properly before us and must be dismissed," here is in error.

It is not logical or reasonable to insist that an employe perform a vain, idle and absurd act of appealing downward from the decision of the District Master Mechanic to the Roundhouse Foreman and assume the subordinate foreman can determine an appeal of his superior.

Therefore we dissent from the majority decision in Awards No. 4027, 4028, 4029, 4030, 4031.

C. E. Bagwell
T. E. Losey
E. J. McDermott
Robert E. Stenzinger
James B. Zink

REFEREE'S REPLY TO LABOR MEMBERS DISSENT ON AWARDS 4027 - 4031

This referee heartily concurs in the statement that it is not logical or reasonable to require an employe to file a grievance with his immediate supervisor instead of appealing a discipline decision directly to the next successive higher officers. Many agreements prescribe such procedure in discipline cases, and the referee believes that the parties could properly adopt it here. But he cannot find any authority for this Board's adopting that procedure for them, under the guise of "interpreting" the present Agreement as so providing.