

**Award No. 4119**  
**Docket No. 3966**  
**2-L&N-SM-'63**

**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. 91, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Agreement, Sheet Metal Worker H. W. Pierson was unjustly discharged from service November 5, 1959.

2. That accordingly the carrier be ordered to restore this employe to service with all seniority rights unimpaired and with compensation for all time lost retroactive to the aforesaid date, and all other contractual rights accruing to him.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of October 23, 1959, Sheet Metal Worker, H. W. Pierson hereinafter referred to as the claimant, was notified by the carrier master mechanic that he was charged with responsibility of sleeping while on duty October 23, 1959, and that investigation would be held in his office Tuesday, October 27, 1959, beginning at 1:00 P. M. Copy of that notification is submitted herewith and identified as Exhibit I.

On October 27, 1959, investigation was held in the office of the master mechanic at South Louisville Shops, Louisville, Kentucky in connection with the aforementioned charges and copy of the transcript is submitted herewith as Exhibit "AA".

Under date of November 5, 1959, the carrier's superintendent notified the claimant that Discipline Bulletin 149 regarding dismissal of a pipefitter applied to claimant and in effect dismissed the claimant effective that date. The superintendent's letter of November 5 1959 as well as Bulletin No. 149 is submitted herewith and identified as Exhibits IV and V.

The claimant's service record with the carrier is 20 years. Four years as an apprentice and sixteen as a mechanic.

This dispute has been handled in accordance with the provisions of the existing agreement effective September 1, 1943, as subsequently amended, up

shown that he will not hesitate to misrepresent facts when it suits his purpose to do so, and has demonstrated that he is not the type of employe carrier should be asked to restore to its service under any circumstances.

There is no basis for an affirmative award in this case and the claim of the employes should be denied in its entirety. In this connection, attention is invited to the following excerpts from awards of this and other divisions of the Adjustment Board:

"There was direct conflict in the evidence. The board is in no position to resolve conflicts in the evidence. The creditability of witnesses and the weight to be given their testimony is for the trier of the facts to determine. If there is evidence of a substantial character in the record which supports the action of the carrier, and it appears that a fair hearing has been accorded the employe charged, a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established. None is here shown. Reasonable grounds exist to sustain the determination of guilt made by the carrier."

(Second Division Award 1809, Referee Carter)

"This Board is loathe to interfere in cases of discipline if there is any reasonable grounds upon which it can be justified."

(Second Division Award 1109)

"... it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to the amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

(Second Division Award 1323)

"In proceedings such as these we do not examine the record of testimony to determine weight of creditability. We look for substantial and satisfactory support, and when that is found our inquiry ends. Awards upon this point are so numerous as to make citation of any of them unnecessary."

(First Division Award 14552)

"... Our function in cases of the kind here involved, as we understand it, under Awards of this Division of the Board so well known and established that they require no citation or further consideration, is not to pass upon the creditability of the witnesses or weigh the evidence but to determine whether the evidence is substantial and supports the charges as made. If it is we cannot substitute our judgment for that of the carrier and it is our duty to leave its findings undisturbed unless it is apparent its action is so clearly wrong as to amount to an abuse of discretion."

(Third Division Award 5401)

**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.

After a review of the record and without prejudice to the position of either party in other or future cases, the Division holds that claimant should be reinstated with seniority and vacation rights unimpaired, but without pay for time lost.

#### AWARD

Part 1 — sustained

Part 2 — sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

---

**INTERPRETATION NO. 1 TO AWARD NO. 4119  
DOCKET NO. 3966**

**Name of Organization:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)**

**Name of Carrier:**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**Question for Interpretation:**

“Do the words in the findings of Award No. 4119, reading as following:

‘... the Division holds that Claimant should be reinstated with seniority and vacation rights unimpaired, but without pay for time lost.’

“and Award reading:

‘Part 1 — sustained

‘Part 2 — sustained to the extent indicated in the findings.’

“provide that the Claimant be paid for vacations due and earned?”

When claimant was discharged on November 5, 1959, the only contractual provisions for pay in lieu of vacations were Article 5 of the Vacation Agreement, and Article 8 thereof, as amended by Section 5 of the Agreement of August 21, 1954, neither of which is applicable to the circumstances here.

Article 8 of the Vacation Agreement was further amended by Section 2 of Article IV of the National Agreement of August 19, 1960, effective as of September 1, 1960. If claimant had been discharged on or after that date he would have been paid for any vacation previously earned but not yet granted.

Since by the 1960 Agreement the parties expressly agreed upon September 1, 1960, as the date upon which the provision was to become effective, this Board has no authority to advance its effective date to November 5, 1959.

The question must therefore be answered in the negative.

Referee Howard A. Johnson, who sat with the Division as a Member when Award No. 4119 was rendered, 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 25th day of May, 1964.