

Award No. 4155
Docket No. 4003
2-SOU-MA-'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. 21, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier, without proper cause and in violation of the controlling agreements, on May 20, 1960, suspended Machinist C. H. Plummer from service and on May 24, 1960 held a formal investigation and without sufficient cause and in violation of the agreements terminated his services.

2. That accordingly, the Carrier be ordered to compensate Machinist C. H. Plummer for all time lost from May 20, 1960 through July 27, 1960, upon which date he was reinstated to the Carrier's service with unimpaired rights effective July 28, 1960.

EMPLOYES' STATEMENT OF FACTS: C. H. Plummer, hereinafter referred to as the claimant, is employed by the Southern Railway Company, hereinafter referred to as the carrier, as a machinist at the Charlotte Roadway Shop, Charlotte, North Carolina, with a seniority date of March 15, 1951.

Upon reporting to his assigned work station on the morning of May 20, 1960 the claimant found several small machined plates had been left by parties unknown to him on a shop float or platform which had been assigned to the claimant for a particular use. The claimant pushed these small plates off the platform onto the floor. At this point the carrier's Assistant Shop Superintendent R. H. Lanning appeared and following a brief discussion between the two parties the claimant found himself in the office of the shop superintendent charged with "insubordination and failing to carry out assignment".

Preliminary investigation was conducted in Superintendent of Shops, O. T. Harmon's office at 8:15 A.M., May 20, 1960. At the close of the preliminary investigation the claimant was removed from the service.

Machinist Plummer was charged with, and proven guilty of, refusal to carry out his assignment and insubordination on May 20, 1960. He was therefore dismissed for just and sufficient cause. Having been reemployed by the carrier at its election on a leniency basis, he does not have any contract right to be paid the compensation here demanded on his behalf. The Board cannot, in these circumstances, do other than make a denial award.

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.

The claim is that claimant was discharged without sufficient cause and should be compensated for all time lost until his reinstatement to service.

The record shows that soon after reporting for work claimant found on a shop truck some steel plates which had been placed there on the preceding shift, and threw them on the floor. The assistant shop superintendent told him to put them on another float and he apparently started to comply; but some time later the assistant foreman came back, found the plates still on the floor, and asked claimant if he was not going to pick them up. There is no material conflict in the evidence. According to the foreman, claimant refused to pick them up; according to claimant he said "I don't know whether I will or not." Either version shows insubordination; for there was no occasion for claimant to consider whether he would comply with the order or not. Furthermore, he had failed to comply with the order for an appreciable though unstated period during the foreman's absence, which in itself constituted insubordination. Claimant's insubordination is effectively admitted by the statement in employes' rebuttal that if it had not been for the assistant foreman's manner claimant "would have complied immediately." However, the claim is, not that he was justifiably insubordinate, but that he was not insubordinate at all.

The investigation was held in compliance with Rule 34, and Claimant and his representatives agreed that it had been conducted impartially.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.