Award No. 4177
Docket No. 4089
2-CMStP&P-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the Carrier improperly suspended Electrician A. A. Ellenbecker effective May 8, 1960 and unjustly discharged him from the service effective May 16, 1960.

2. That accordingly, the Carrier be ordered to reinstate the aforementioned employe with all rights unimpaired and compensate him for all time lost account the aforesaid improper suspension and unjust discharge.

EMPLOYES' STATEMENT OF FACTS: Electrician A. A. Ellenbecker, hereinafter referred to as the claimant was employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, at its Diesel House Shop in Milwaukee, Wisconsin, since January 13, 1942.

Under date of May 8, 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., May 11, 1960 for a standard investigation to develop all facts in his alleged violation of Schedule Rule 34, Paragraph F, and suspended the claimant from service pending this investigation. The claimant complied with this letter and appeared at the investigation on May 11, 1960. The carrier then found that they were charging the claimant with a violation of a rule that did not cover him. They held the investigation and read the notice, asked the claimant if he received such a notice, and he advised that he did. The carrier then stated that there was an error made and concluded the investigation.

The claimant on May 11, 1960 at 4:30 P. M. was handed another service signed by District Master Mechanic A. W. Hallenberg, advising him to appear

Third Division Award No. 6231

"Nothing in the record indicates the Carrier has acted in an arbitrary or capricious manner, nor is there any evidence of bad faith on the part of Carrier toward this employe. It is not the function of this Board to substitute its judgment for that of the Carrier, in discipline cases where the evidence reasonably tends to support the contention of Carrier. For that reason we must exercise a high degree of caution in reviewing cases of this nature. In the case before us, the Organization contends the charges as alleged are unproven, which brings us to the proposition that we are being called upon to determine a question of fact. This Board has held in numerous Awards, that we cannot substitute our judgment for that of the Carrier in discipline cases, where there is no evidence the Carrier acted in an arbitrary, capricious manner or showed evidence of bad faith toward the employe. See Awards 1497, 2621, 2767, 3172, 3185.

"Based on the record and a long line of awards supporting the contention of the Carrier, we hold this Board is not justified in substituting its judgment for that of the Carrier."

The carrier wishes to point out that A. A. Ellenbecker was reinstated on a leniency basis effective May 17, 1960.

The attention of your Honorable Board is directed to the following Awards which fully support the Carrier's position in the instant case:

"Second Division	Third Division
1548	2648
1787	3693
1848	5426
1979	5427
2007	5799"
2685	
2715	

As stated, it is the position of the Carrier that the responsibility of Mr. A. A. Ellenbecker in connection with the charges preferred against him was fully developed and his dismissal was warrented 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 4175 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 20th day of March, 1963.