

**Award No. 4178
Docket No. 4090
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 EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly suspended Electrician Helper Joseph Votapek 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 employed with all rights unimpaired and compensate him for all time lost account the aforesaid improper suspension and unjust discharge.

EMPLOYEES' STATEMENT OF FACTS: Electrician Helper Joseph Votapek, 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 May 14, 1934.

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 12, 1960 at 10:30 A.M. was handed another notice 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 employee. 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 employee. 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 Mr. Joseph Votapek 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. Joseph Votapek 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 employee or employees involved in this dispute are respectively carrier and employee 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.