Award No. 4367
Docket No. 4339
2-CMStP&P-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald 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 promoted machinist helper Elmer Raddemann was unjustly dismissed from the services of the Chicago, Milwaukee, St. Paul & Pacific Railroad, October 18, 1961, and

2. That accordingly the Carrier be ordered to restore the above mentioned employe to service with all service and vacation rights unimpaired, with full payments made toward his coverage under the existing Health & Welfare and Life Insurance provisions, and compensated for all time lost while he was unjustly suspended and dismissed from service.

EMPLOYES' STATEMENT OF FACTS: Promoted machinist helper Elmer Raddemann, hereinafter referred to as the claimant, has been employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, since 1948 in the capacity of machinist helper, and on several occasions has been promoted to machinist.

On September 28, 1961 General Foreman R. P. Drew directed a letter to the claimant, requesting him to appear for a standard investigation to develop the facts concerning an alleged violation of schedule agreement between the carrier and System Federation No. 76. Claimant was charged with refusing to perform services as outlined by his supervisor, leaving assignment without proper authority and falsifying his time record. This letter also advised the claimant that he was suspended pending results of investigation which was subsequently held on October 3, 1961 by Mr. A. W. Hallenberg, district master mechanic. Under date of October 17, 1961, claimant was notified by General Foreman, R. P. Drew that he was dismissed from the service of the carrier, effective October 18, 1961.

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.

Claimant had been employed as a machinist helper and as a Machinist by the Carrier since 1948.

On September 28, 1961, Claimant was notified that he was suspended pending an Investigation which was held on October 3, 1961, the transcript of which appears in the record before us.

Claimant was notified on October 17th, 1961 that he was dismissed from the service of the Carrier effective October 18, 1961. He is here seeking reinstatement under Rule 34 of the Controlling Agreement.

Carrier raises several procedural objections which we dispose of before proceeding to the merits of the dispute.

1.) Carrier states that we are without jurisdiction in this matter, since the dispute has not been handled in the "usual manner", in that the Claimant has enlarged his claim upon coming to the Adjustment Board by seeking here, for the first time, "full payments toward his coverage under the existing Health and Welfare and Life Insurance provisions. . . ." While it is true that Rule 34(b) seems to contemplate only the restoration of seniority rights and pay for time lost, nevertheless, a complete restoration of a dismissed employe would invalidate the dismissal; treat it as void; and reinstate the Claimant for all purposes as if he had never been dismissed. We cannot penalize Claimant for seeking what might properly flow from a complete exoneration. This objection is overruled.

2.) Carrier asserts that Claimant has not complied with Section 1(b) of Article V of the August 21, 1954 Agreement because the letter of declination dated January 12, 1962 was never rejected in writing. Thus, says Carrier, the matter was mishandled on the property and the claim is barred and should be dismissed.

It is true that the General Chairman wrote to the Shop Superintendent on December 7, 1961, "appealing" the denial of the claim which was not denied in writing until January 12, 1961. And it is true that the Shop Superintendent Bittner, and the Assistant to the Vice-President in charge of personnel raised this objection in correspondence with the General Chairman. (cf. Carrier's exhibits "J" and "K".)

However, the record shows later correspondence between the Assistant to the Vice President (Mr. Amour) and the Machinists' General Chairman treating the matter only on the merits (cf. Employes' Ex. "I" and "J"). We deem this a sufficient waiver to consider the matter on its merits, and to not declare the matter closed.

3.) Carrier objects to our consideration of Exhibits "C", "D" and "E" of the Employes' submission as obviously not considered on the property. We uphold this objection and decline to consider these exhibits as well as the counter-exhibits attached to the Carrier's rebuttal.

On the merits of this dispute, we have examined the transcript and have examined all other matters submitted by the parties.

Claimant was charged with refusing to perform services as outlined by his supervisor, leaving his assignment without proper authority, and with falsifying his time record.

A brief resume of the evidence adduced at the hearing shows that Claimant was assigned to operate Boring Mill No. 14 and that on the night in question, Claimant refused to operate the Boring Mill, advising his foreman that he would not because it was unsafe to operate. The record discloses that the chip guard for the Mill had been removed on September 23rd. Claimant had operated the Mill on two previous shifts in this condition, and the record discloses that he had complained to his committeeman about the situation, and he states that he had also complained to the Shop Superintendent about it.

After advising his Foreman that he would not work the Mill, Claimant filled out his time card for eight hours and went home. There is a conflict of evidence as to what the conversation consisted of at this point, but it is not a decisive factor in our consideration of this dispute.

There are Safety Rules in effect at this Shop.

Rule 4 of the Safety Rules reads:

> "4. Employes must determine by examination that the tools, machinery and equipment to be used are in good order; when in doubt the foreman must be consulted."

Rule 7 of the Safety Rules reads:

> "All safety guards must be in place before a machine is put in motion."

It is undisputed that the chip guard was not in place, and we find that this created a hazardous condition, justifying Claimant in refusing to work on the machine, notwithstanding the fact that he had worked on it at least two previous shifts. However, we cannot agree that his conduct was in accordance with the orderly procedures for the resolution of his grievance.

Claimant was apparently found guilty of all three charges and we shall deal with them in order.

1. The charge of refusing to perform services as outlined by his supervisor.

While there appears to be no direct order to Claimant to operate the machine after he had first refused to do so, he did refuse to operate it, and justifiably so, for we have found that the lack of a chip guard was a hazardous condition.

2. The charge of leaving his assignment without proper authority.

This is where the Claimant failed to follow the orderly procedure set up in the Controlling Agreement, but his aggravation can be partly attributed to the Carrier's insistence that a hazardous machine be operated.

3. The charge that Claimant falsified his time card.

Claimant admits that he was in error in filling out his time card as he did, yet the record indicates that prior to the August 21, 1954 Agreement, this was a method used for the filing of a time claim. The circumstances under which Claimant filled this out were such as to negate any sinister implication of "falsifying" a time card, and the evidence does not support this charge. It supports a headstrong mistake on his part.

We conclude that only one of the charges was substantiated in this record, and that was Claimant's failure to follow the orderly procedures contained in the Controlling Agreement. Some discipline was called for, but not of the severity of that imposed by the Carrier which maintained the unsafe condition which precipitated this whole dispute.

The original suspension from September 28, 1961 to October 17th 1961 was a proper measure of discipline, and the dismissal of Claimant was unreasonable under the facts in this record.

AWARD

Part 1 of Claim sustained.

Part 2 of Claim sustained in part. Claimant to be reinstated with his seniority rights unimpaired as of October 18th, 1961 and paid for all time lost since that date, less any amount earned in other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December, 1963.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when the interpretation was rendered.)

INTERPRETATION NO. 1 TO AWARD NO. 4367

DOCKET NO. 4339

NAME OF ORGANIZATION:

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

NAME OF CARRIER:

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

QUESTION FOR INTERPRETATION: "Does the language in Award No. 4367, reading:

> "1.) Carrier states that we are without jurisdiction in this matter since the dispute has not been handled in the 'usual manner', in that the Claimant has enlarged his claim upon coming to the Adjustment Board by seeking here, for the first time, 'full payments toward his coverage under the existing Health and Welfare and Life Insurance provisions . . .' **While it is true that Rule 34(h) seems to contemplate only the restoration of seniority rights and pay for time lost, nevertheless, a complete restoration of a dismissed employe would invalidate the dismissal; treat it as void; and reinstate the Claimant for all purposes as if he had never been dismissed.** We cannot penalize Claimant for seeking what might properly flow from a complete exoneration. This objection is overruled. **(Emphasis ours.)**
>
> "The original suspension from September 28, 1961 to October 17th, 1961 was a proper measure of discipline, and the dismissal of Claimant was unreasonable under the facts in this record."

and the award reading:

> "Part 1 of Claim sustained.
>
> "Part 2 of Claim sustained in part. Claimant to be reinstated with his seniority rights unimpaired as of October 18th, 1961 and paid for all time lost since that date, less any amount earned in other employment."

require the carrier to make premium payments for the claimant's Health and

Welfare and Life Insurance coverage that it would have made had it not unjustly dismissed him from service?

As we noted in our Award, paragraph 1.) set out above was concerned solely with the resolution of a procedural objection. Application of the paragraph to the merits of the dispute is not warranted.

The reason that Part 2 of the claim was sustained "in part", is that Claimant did not receive all he sought in part 2., i.e., a complete exoneration.

Rule 34(h) of the controlling agreement reads in part as follows:

> "* * * * * such employe shall be reinstated with his seniority rights unimpaired and **paid for all time lost resulting from such suspension or dismissal,** less any amount earned in other employment." **(Emphasis ours.)**

Our Award restored Claimant to employe status as of October 18, 1961.

We hold that the Rule contemplates a restoration to Claimant of that which he would have earned by him time at work during the period he was improperly held off the job by the Carrier. This would include Health and Welfare and Life Insurance premium payments.

We are aware of other Awards of this Division which seemingly contradict such a holding, particularly Award No. 3883. But this loss of coverage was no consequential item of damage, but a direct and proximate result of the loss of time contemplated by Rule 34(h).

The Award as made, requires an affirmative answer to the question submitted for interpretation.

Referee Joseph M. McDonald, who sat with the Division as a Member when Award No. 4367 was rendered, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

Attest: William B. Jones, Chairman

E. J. McDermott, Vice Chairman

ATTEST: William B. Jones—Chairman
E. J. McDermott—Vice Chairman

Dated at Chicago, Illinois, this 3rd day of December, 1964.