

Award No. 4528

Docket No. 4459

2-SOU-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement carmen J. O. Marona, James F. Courington, C. H. Ware and L. T. Nunnelley were unjustly removed from service September 23, 1962 and unjustly discharged from service October 3, 1962.

2—That accordingly the Carrier be ordered to reinstate the aforementioned employes to the service with all seniority, vacation, free transportation and employment rights unimpaired, compensate them for all time lost September 23, 1962, until restored to service and keep their Travelers Insurance in full force and effect during period of dismissal.

EMPLOYEES' STATEMENT OF FACTS: Carmen J. O. Marona, James E. Courington, C. H. Ware and L. T. Nunnelley, hereinafter referred to as the claimants, employed by the carrier at Birmingham, Alabama, were taken out of service, charged with insubordination to officer in charge, September 23, 1962.

Formal investigation was held September 28, 1962.

October 3, 1962, the claimants were notified they were dismissed from the service of the Southern Railway.

This dispute has been handled with the carrier's officers designated to handle such matters, in compliance with the current agreement, all of whom have refused or declined to make satisfactory settlement.

The agreement effective March 1, 1926, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted the claimants were subject to the protection of the provisions of the aforesaid agreement made in pur-

unjustly suspended and discharged as alleged. To the contrary, they were proven guilty of insubordination as charged and were therefore dismissed for just and sufficient cause and their employment relationship forever terminated.

(b) Principles of prior board awards fully support carrier's position and its action.

(c) The Board is without authority to do what is demanded in part 2 of the claim. That part of the claim should therefore be dismissed by the board for want of authority to consider the demand made.

The board, being without authority to consider the demand made in part 2 of the claim, should dismiss that part for want of jurisdiction. The remainder of the claim being without basis and without support of the agreement in evidence, the Board has no alternative but to 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 Division finds that, after a careful review of the voluminous record of this case, there is substantial evidence to prove that the carrier discharged the claimants for good and sufficient reasons, i.e. their expressed refusal to carry out their work assignments when directed to do so by appropriate supervisory officials.

The Division is unable to accept as valid, the Claimants' plea of extenuation of unsafe working conditions. The record is clear that the train in question—Train No. 153—was a first class train given expeditious treatment. It was a train which more than once had been made up on the Track in question—Track No. 1 West—with a number of cars extending beyond the switch, without protest or challenge being made by the employes as to the alleged unsafe working conditions. Moreover, one of the Claimants was a member of the Safety Committee, which met with the carrier monthly, and he admitted at the hearing that he had never raised any question as to the alleged unsafe working conditions resulting when Train No. 153 was made up on the track in question with more cars than the track could hold.

It is in light of this record, that the Division has no alternative but to uphold the disciplinary action of the carrier.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1964.