

Award No. 4610

Docket No. 4538

2-NP-EW-64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That J. M. Courneya, communication lineman, Auburn, Washington, was unjustly suspended from the services of the Northern Pacific Railway Company for a fifteen (15) calendar day period, December 31, 1962 to January 14, 1963.

2. That accordingly the Northern Pacific Railway Company be ordered to reimburse Communication Lineman J. M. Courneya for wages lost during the period of December 31, 1962 to January 14, 1963, when he was held out of service and to strike the 15 calendar day suspension mark from his personal record.

EMPLOYEES' STATEMENT OF FACTS: Communication Lineman J. M. Courneya hereinafter referred to as the claimant, was employed by the Northern Pacific Railway Company, hereinafter referred to as the carrier, on January 6, 1947, as a groundman, promoted to communication lineman on November 1, 1947, and holds the position of communication lineman with headquarters at Auburn, Washington from February 11, 1958.

The assigned territory of the claimant is:

"Martin to Auburn, Seattle (Spokane Street Cable Pole to Reservation Cable Poles and Cable House, Enumclaw Leg: Palmer Jct. to Enumclaw, Renton Loop, Seattle and Auburn Local Circuits."

Under date of November 29, 1962, the claimant was notified to report to the office of the Trainmaster at Auburn, Washington at 10:00 A. M. on Monday, December 3, 1962, for an investigation as per the following:

"You are charged with violation of Rules M, 702, 704, 712, 3302,

In Award No. 1323 this Division said:

"It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

The Third Division in numerous additional awards, such as Awards Nos. 1632, 2378, 2496, 2769, 2860, 2880, 3919, 3965, 3984, 3985, 4106, 4298, 4326, 4369, 4521, 4591, 4622, 4650, 4668, 4683, 4716, 4982, 5009, 5011, 5426, 5977, 6332, 6467, 6598, 6620, 6940, 7072, 7139, 8335 and 8376 has consistently adhered to the principle enunciated in the foregoing awards.

Rule 37(d) of the Communications Department Agreement effective November 1, 1954 reads:

"(d) If the charge against the employe is not sustained, his record shall be cleared and he shall be returned to his former position with seniority rights unimpaired and compensated for all time lost less what he may have earned in other employment."

The evidence developed at the investigation conducted on December 17, 1962 conclusively shows that the charges preferred against Mr. Courneya were sustained. Accordingly, and in the application of Rule 37(d), the claim that Mr. Courneya now be reimbursed for time lost while serving an actual suspension from service extending from December 31, 1962 to January 14, 1963 cannot be upheld.

The record in this docket firmly establishes the conclusion that the rules of the communications department agreement effective November 1, 1954 were complied with in meting out the discipline to Mr. Courneya.

The record in this docket also firmly establishes the conclusion that the discipline administered to Mr. Courneya was not tainted with bias but was reasonable and rendered in good faith.

Based upon the record in this docket, this division should not now order the removal of the discipline administered and payment of time lost to this employe.

The claim covered by this docket should be denied in its entirety.

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.

After an investigation, the carrier found that this claimant had violated

certain operating rules and that he was responsible for his motor car having been struck by a train. He was suspended from service for fifteen days.

The claim presented to us states that the communication lineman claimant was unjustly suspended. We are asked to award compensation to him for the time lost and to have the suspension stricken from his personal record.

To sustain the claim it would be necessary that we find that the carrier's disciplinary action was either arbitrary, capricious or exercised in bad faith. This record does not support such a finding.

Being without authority to grant leniency and because of the facts presented, we must deny the employe's requests.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.