

Award No. 4623
Docket No. 4614-I
2-PE-I-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

D. M. HEALY AND PETER CALIGIURE
CARMEN, PETITIONERS

PACIFIC ELCTRIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under provisions of the current Agreement Carmen Peter Caligiure and D. M. Healy were unjustly suspended on July 18, 1963, and dismissed from the service of the Carrier on August 9, 1963; and

2. That accordingly, Carrier be ordered to reinstate them with all rights of employment and compensated for all time lost retroactive to July 18, 1963.

EMPLOYES' STATEMENT OF FACTS: The Pacific Electric Railway Company, hereinafter referred to as the carrier, employed Carmen Peter Caligiure and D. M. Healy, hereinafter called the claimants, on the Night Shift, Los Nietos Yard, Los Angeles, California, and claimants have maintained their positions satisfactorily and accordingly since their employment with the carrier.

The carrier's representative L. H. Sultan, master mechanic, summoned the claimants to appear for hearing at 11:00 A.M. July 30, 1963, on alleged charges of being absent from their assigned positions without authority and alleged insubordination to Car Foreman C. F. Peer, and which summons is affirmed by copy of letter dated July 26, 1963. Hearing was held as scheduled.

Carrier's Manager of Personnel, R. L. McIntire, also at that time made the election to summon his witnesses at this July 30, 1963 hearing: Messrs. C. F. Peer, car foreman, W. E. Johnson, leader.

The carrier, nevertheless, made election through its manager of personnel, L. R. McIntire, on August 9, 1963, to dismiss the claimants from the services of the carrier and this is affirmed by copy of letter dated August 9, 1963.

This dispute was handled with the carrier up to and including the highest designated officer by the carrier to handle disciplinary cases. Carriers reply to same under date of August 16, 1963. All of which is affirmed by letters signed by Mr. D. R. Lewis, dated October 10, 1963 and November 5, 1963, the highest officer of the carrier in charge of handling disciplinary cases.

ployment.

These items of testimony clearly show violation of Rule "0" in that both Claimants absented themselves from duty without proper authority. In fact, they absented themselves from duty not only without proper authority, but in direct opposition to the instructions of proper authority for them to return to work.

The board is urged to review the transcript in total. When read from the four corners, it will be readily concluded that these claimants were laboring under false or fancied delusions not substantiated from actual conditions.

While not properly a part of these proceedings, it may be said without equivocation that the incident or incidents giving rise to the matters reviewed in the transcript were simply additives to a condition of long standing, i.e., the concerted effort and actions by each of these claimants to undermine the orderly processes of their work assignments and rules and regulations governing these assignments, as well as the total morale of other employes with whom they worked. The carrier states without hesitation and without any fear of contradiction that the representative organization of the claimants had or has no sympathy with the unfounded contentions of the claimants with respect to their supervisory officers.

3. THE INVESTIGATION WAS CONDUCTED IN FULL COMPLIANCE WITH ALL RULES OF THE COLLECTIVE AGREEMENT AS EVIDENCED FROM THE RECORD AND AS CONFIRMED BY THE CLAIMANTS.

Any question which may be raised by the claimants concerning conduct of the investigation in full compliance with the rules of the collective agreement may be dismissed because of the direct testimony of the Claimants.

"Mr. McIntire:

Gentlemen, that will conclude the formalities of the investigation, with the exception of one question. May I inquire of Mr. Caliguire and Mr. Healy whether or not they feel the investigation has been conducted fairly and impartially and in accordance with the requirements of the collective agreement under which you work?

Mr. Healy: Yes, I do.

Mr. Caliguire: Yes, I feel I have had a fair hearing at this investigation."

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.

It is clear that the claimants did not fulfill the requirements of the time limit rule in their appeal on the property from the decision of L. R. McIntire, since they did not advise him in writing of their rejection of his decision within 60 days. Hence the claim must be denied.

However, because this claim has been progressed by the individuals involved, we are constrained to note that, in any event, the claim would be denied upon the merits of the case. It is undisputed that the claimants left their jobs without permission and refused to return to work when instructed to do so. To justify that action they allege that they feared that their personal safety was endangered. To be accepted in justification of such action, it would be necessary to show that such alleged fear was founded upon a reasonable factual basis or, in other words, that a reasonably prudent person would have feared for his personal safety under the circumstances then existing. No such showing has been made, so that contention is not sustainable.

AWARD

Claim 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 11th day of December, 1964.