

Award No. 4714
Docket No. 4574
2-SOU-CM-'65

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:

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

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current Agreement Carman J. G. Hurst was improperly suspended from service August 8, 1962, and discharged from service August 23, 1962.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe for all time lost August 8, 1962 to September 8, 1962, twenty (20) working days.

EMPLOYES' STATEMENT OF FACTS: Carman J. G. Hurst, hereinafter referred to as the claimant, employed by the carrier at Birmingham, Alabama, was taken out of service, charged with dereliction of duty August 7, 1962.

Formal investigation was held August 14, 1962.

On August 23, 1962, the claimant was notified he was dismissed from the service of the Southern Railway Company.

Carman Hurst was permitted to return to work September 8, 1962, after losing twenty (20) working days.

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

The agreement effective March 1, 1962, as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted the claimant was subject to the protection of the provisions of the aforesaid controlling agreement made in pursuance of the amended Railway Labor Act, particularly the terms of Rule 34, which reads in pertinent part:

"An employe will not be dismissed without just and sufficient cause or before a preliminary investigation, which shall be held immediately by the highest officer in charge at the point employed. If, after the preliminary investigation, the case is appealed, an in-

transcript of the proceedings and there is such basis for the discipline that it cannot be said to have been arbitrary, unreasonable, or in bad faith . . .”

Also see the following additional awards of the Fourth Division:

257	671	901	1124
264	677	912	1152
337	755	978	1201
375	796	1008	1218
401	804	1048	1241
574	844	1081	1268
622	899	1102	1270

The discipline having been imposed in good faith without bias or prejudice, and there being no evidence of arbitrary or capricious judgment, the board should follow the principles of the cited awards and refrain from substituting its judgment for that of the carrier, which it, in fact, has no authority to do.

CONCLUSION: Carrier has proven conclusively that:

- (a) The effective agreement was complied with to the letter by carrier.
- (b) The charge against Car Repairer Hurst was proven, and he was dismissed for just and sufficient cause. He was not improperly suspended and discharged from service as alleged.
- (c) There can be no showing that the discipline was imposed as a result of arbitrary or capricious judgment or in bad faith. Furthermore, carrier's action is fully supported by the principles of awards of all four Divisions of the Board.
- (d) The board is without authority to substitute its judgment for that of carrier.

In view of all the evidence, the board cannot do other than 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.

Even if it be found that the claimant was guilty on this occasion, the employer should not have dismissed an employe with 25 years of service upon a first offense of such nature. This is the sort of conduct which is normally considered as deserving of a warning talk or reprimand the first time committed.

Accordingly we find that there was not just and sufficient cause for dismissal, as is required by the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1965.

DISSENT OF CARRIER MEMBERS TO AWARD 4714

In this award the Board has completely lost sight of the purpose for which it was created, which is—

“(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.” (Sec. 2, RLA)

The authority of this Board is limited to interpreting the agreement between the parties. The Board is without authority to change the terms of the agreement. It cannot change the terms of the agreement by interpretation or otherwise.

It is noteworthy that the Board does not hold in this award that the Carrier violated Rule 34 or Rule 36 of the controlling agreement, which provide for the procedure to follow in dealing with grievances. Neither does the Board hold that Carrier failed to prove its charge against the claimant or that the offense was not reasonably related to the orderly, efficient, and safe operation of Carrier's business.

What this Board did was simply to ignore the controlling agreement provisions (which it is not authorized to do) and find fault with Carrier's present operation, and then attempt to direct the Carrier's future operation.

The Board should follow the principles of many prior better reasoned awards and refrain from attempting to substitute its judgment for that of the Carrier, which, in fact, it has no authority to do.

For these reasons, we dissent.

P. R. Humphreys

H. F. M. Braidwood

F. P. Butler

H. K. Hagerman

W. B. Jones