

Award No. 4798

Docket No. 4731

2-AT&SF-MA-'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. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. — C. I. O. (Machinists)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
— WESTERN LINES —**

DISPUTE: CLAIM OF EMPLOYES:

1. That as a result of formal investigation held on November 16, 1962, Harry B. Cullinane, Machinist, La Junta, Colorado, was unjustly dismissed from the service of the Carrier, effective November 16, 1962.

2. Claim that he be restored to carrier service as machinist with all seniority and service rights intact.

EMPLOYES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, maintains a mechanical department facility at La Junta, Colorado, and employs a force of approximately ten (10) machinists which include Harry B. Cullinane, hereinafter referred to as the claimant, to perform, among other things, the inspection, servicing, maintenance and repair of diesel locomotives and various other types of mechanized equipment. Claimant was employed on a third shift, Wednesday through Sunday assignment, prior to his suspension from service on November 16, 1962, and subsequent dismissal.

Claimant is sixty (60) years of age having had a record of employment with the carrier dating to August 6, 1922, as machinist helper and February 2, 1927, as machinist following completion of a contractually recognized apprenticeship. He had in excess of forty (40) years service with the carrier prior to his suspension and subsequent dismissal from service.

Claimant was ordered to appear for formal investigation by Master Mechanic J. D. Swauger to answer charges of allegedly violating Rule 20 of Form 2626 Standard, General Rules for the Guidance of Employees, amended 1959, reading as follows:

3. The record herein established clearly reveals that the carrier's action in dismissing Claimant Cullinane from its service was not arbitrary, capricious or an abuse of discretion.

4. Two unbiased and objective investigations made at La Junta subsequent to Claimant Cullinane's dismissal revealed that his conduct and reputation subsequent to that dismissal precluded any serious consideration of his reinstatement to service on a leniency or any other basis, therefore; carrier respectfully requests that its action not be disturbed and that the claim be dismissed or 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 employee or employees involved in this dispute are respectively carrier and employee 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.

At the investigation it was established that claimant made a nuisance of himself on the Carrier's property on one of his rest days. Considering his 40 years of service, we find that dismissal under those circumstances was not a reasonable exercise of the Carrier's responsibility for discipline.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1965.