

Award No. 5337

Docket No. 5149

2-AT&SF-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Railway Company, party to this dispute, erred and violated the existing current working agreements between the parties to this dispute, when they improperly dismissed Filberto Carrillo from service on December 22, 1964.

2. That accordingly, the Railway Company be ordered to restore Filberto Carrillo to service, with all rights and benefits unimpaired, including but not limited to: compensation for all time lost; all vacation rights; all hospital association dues to be paid; all Group Insurance Policy premiums to be paid, that he be made whole.

EMPLOYES' STATEMENT OF FACTS: The Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the Carrier, employed Mr. Filberto Carrillo, hereinafter referred to as the Claimant, as a Journeyman Electrician at their Diesel Shop in Barstow, California. The Claimant was regularly employed, hourly paid and a qualified mechanic of his trade.

The Claimant was absent from duty from about September 21, 1964 to November 12, 1964.

On November 23, 1964, an investigation was held in the office of the Superintendent of Shops at Barstow, copy of the transcript of that investigation is attached hereto as Employees' Exhibit A. As a result of that investigation, the Claimant was removed from the service of the Carrier. Notification of removal is attached hereto as Employees' Exhibit B.

The Claimant at the time of the investigation, had some sixteen (16) years of service with the Carrier. He entered the service of the Carrier as a laborer and was thereafter promoted twice, to Electrician Helper and then to Journeyman Electrician, by the Carrier.

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.

Claimant was dismissed from Carrier's service on December 22, 1964, after having been charged with and found guilty of being absent from duty without permission in violation of Rule 19 of General Rules for the Guidance of Employees.

The evidence adduced at the formal investigation held November 23, 1964, is sufficient to support the Carrier's finding of guilt in this case. However, the record also establishes that Claimant had worked for the Carrier for 16 years and had advanced from laborer to electrician during that period of time. There is no evidence that he had ever been disciplined for a similar offense. The record is also devoid of any showing that Claimant's work history and personal record were taken into consideration by the Carrier in assessing the discipline to be imposed. The Board, however, has given consideration to that background, and accordingly holds that the discipline of dismissal from service was so harsh and excessive as to constitute an abuse of discretion by the Carrier.

In view of the foregoing, the Board finds that Claimant shall be reinstated in the service of the Carrier with seniority and vacation rights unimpaired. That part of the claim seeking compensation for time lost and other benefits is denied.

AWARD

Claim disposed of in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1967.