

Award No. 5345
Docket No. 5129
2-C&NW-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 66, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Electrician Lineman Glen Fortney was unjustly dismissed from the service effective August 25, 1965.

2. That accordingly, Carrier be ordered to restore Electrician Lineman Glen Fortney to the service with seniority rights unimpaired and compensate him for all time lost, pay the premium on Health and Welfare and Group Life Insurance and restore all other benefits, including vacation rights, necessary to make him whole for the aforesaid unjust treatment.

EMPLOYES' STATEMENT OF FACTS: Electrician Lineman Glen Fortney, hereinafter referred to as the Claimant, was employed by the former Minneapolis & St. Louis Railroad Company, now the M&St. L. Division of the Chicago and North Western Railway Company, hereinafter referred to as the Carrier, May 16, 1932, and at the time of dismissal from service had thirty-three (33) years of service. During said years of service, Claimant held many types of assignments and had been serving as an Electrician Lineman since June 27, 1947, to the complete satisfaction of all concerned until shortly before his dismissal.

Under date of July 28, 1965, Carrier directed the following letter to Claimant:

"July 28, 1965

Certified Mail
Return Receipt Requested

Mr. G. M. Fortney
105 West Linn Street
Marshalltown, Iowa

a fair hearing has been accorded the employe charged, a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established. None is here shown. Reasonable grounds exist to sustain the determination of guilt made by the carrier.

Claimant had many years of seniority on this carrier. It is argued that his employment rights ought not to be terminated too readily. The record shows, however, that he was found guilty on July 8, 1952, with having company property, including shovels, jacks, air hose, etc., in his possession off company property without permission. Because of his long service, he was let off with a reprimand. On December 18, 1952, claimant was found guilty of sleeping on duty. He was given a record suspension of sixty days and warned that his record would not stand any more serious trouble.

Under the circumstances, the dismissal of claimant from the service is not unreasonable, arbitrary, or excessive. Claimant failed to profit from leniency extended to him on two previous occasions. The carrier could properly conclude that claimant had forfeited any further consideration on a leniency basis. The dismissal of the claimant is in all respects consistent with the rules of the agreement."

The claim for pay for time lost and pay for insurance premiums should be dismissed on the basis that this portion of the claim is barred by the time limit rule and by Section 3 First (i) of the Railway Labor Act. The claim for reinstatement should be denied.

All information contained herein previously has been submitted to the employes during the course of the handling of this case on the property and is hereby made a part of the particular question here in dispute.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

The record of the investigation, held prior to Claimant's dismissal, establishes without any semblance of doubt that the said Claimant was guilty of the charges preferred against him in the letter of July 28, 1965. He filed false work reports, he failed to follow instructions to repair an unsafe pole, and he continuously ignored verbal and written instructions to file daily work reports. A violation of any one of these justifies disciplinary action.

It is true that the Claimant had about 33 years of service with the Carrier. Generally, this should be considered in administering a justifiable

penalty. But that is so when an employe's work record, except for the single instance, has been satisfactory. That is not the case here.

On November 21, 1964, Claimant was reprimanded and instructed in writing to keep in touch with his headquarters and with the dispatcher before leaving his job to inquire if any wire trouble in his territory needed attention.

Less than a week later - November 27, 1964 - he was removed from service for failure to protect his territory on that day. An investigation was held on December 8, 1964. On December 18, 1964, Carrier's Communications Engineer wrote to Claimant, in part as follows:

"I am satisfied that all 3 charges have been proven on the basis of the record attached; however, I have been persuaded solely by Mr. Webber's intervention on your behalf to be lenient. I want it clearly understood that any future violation will result in appropriate disciplinary action.

Therefore, on the basis of Mr. Webber's representation that you will make the necessary improvements in your attitude and performance, I am agreeable to restoring you to your position at Marshalltown, without back pay . . ." (Emphasis ours.)

Employes' principal argument is "that the discipline in the instant case was too severe." At no time on the property, did Employes ask that the Claimant be compensated for lost time while he was held out of service. In any event, this Board has no authority to reinstate Claimant solely on a request for leniency. On the basis of the entire record we are obliged to conclude that we have no right to challenge Carrier's judgment and change the penalty.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1968.