

Award No. 5428

Docket No. 5286

2-SOU-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling Agreement Carman R. H. Bedwell, Knoxville, Tennessee, was improperly suspended from service beginning August 13, 1965 through August 27, 1965.

2 That accordingly, the Carrier be ordered to compensate the aforesaid employe for all time lost beginning August 13, 1965 through August 27, 1965.

EMPLOYEES' STATEMENT OF FACTS: Carman R. H. Bedwell, Knoxville, Tennessee, hereinafter referred to as the Claimant, was employed by Southern Railway Company, hereinafter referred to as the Carrier, at Coster Shop, Knoxville, Tennessee and was removed from service August 13, 1965 through August 27, 1965, charged with failing to discharge his duties in that, while he had been assigned by his supervisor to go to a scrap classification field to bring in some air brake equipment, he was instead inside the Fabrication Shop conversing with another employe. Copy attached and marked Exhibit A.

Formal investigation was held August 17, 1965, copy attached and marked Exhibit B.

The trial officer designated by the Carrier was Mr. O. A. Kitts, Assistant Manager, Coster Shop.

In a letter dated August 20, 1965, the Claimant was advised by Mr. Kitts, Assistant Manager of Coster Shop, that he was found guilty as charged and suspended from service without pay beginning August 13, 1965, and ending at midnight August 27, 1965. Copy of letter attached and marked Exhibit C.

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

Carrier not having seen the Brotherhood's submission reserves the right after doing so to make response thereto and submit any other evidence necessary for the protection of its interests.

(Exhibits not reproduced)

Oral hearing is requested.

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.

The Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Shop Manager observed two employes in the fabrication shop engaged in conversation. The claimant admitted he was discussing union business with a fellow worker although he did not have permission from his superior to engage in such conversation. The time consumed in the conversation is in dispute, the Carrier contending three minutes while the Claimant said it was one minute. It was not disputed that the conversation took place in an area other than the work area of the claimant.

The claimant was charged with failing to discharge his duties from which the claimant appeals. The penalty was suspension from service without pay from August 13, 1965 and ending Midnight August 27, 1965, a total of 14 days.

Upon an examination of the entire record the Board finds that the claimant was having a discussion with a fellow worker without the permission of his superiors. That the claimant was not in his work area while so engaged. However, the infraction is a minor one and the penalty is excessive and arbitrary.

Thus the Board is of the opinion that one day out of service is an adequate penalty.

AWARD

Claim sustained with the penalty reduced to one day out of service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U. S.