

Award No. 5528

Docket No. 5368

2-NP-FO-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. Discipline administered to Roosevelt Stewart, diesel fuel truck operator, was excessive and unjust.

2. That accordingly the Northern Pacific Railway Company be ordered to reinstate diesel fuel truck operator, Roosevelt Stewart, with full seniority rights.

EMPLOYEES' STATEMENT OF FACTS: Roosevelt Stewart, diesel truck operator, hereinafter referred to as the Claimant, was employed by the Northern Pacific Railway Company, hereinafter referred to as the Carrier, as a laborer in the Seattle, Washington Roundhouse on April 13, 1947 and assigned as diesel fuel truck operator in June, 1963, which position he held until his dismissal from service of the Carrier on November 1, 1965.

The Claimant, who was operating diesel fuel truck N.P. No. 1796, was traveling west on Spokane Street about 7:30 P.M., October 15, 1965, and became involved in a traffic accident when the truck Claimant was driving struck one car, pushing it into the car in front of it.

On October 18, 1965, the Carrier notified the Claimant by letter that he was to appear in the Master Mechanic's Office at 9:30 the morning of October 21, 1965, for a formal investigation for charges of violation of Rules M, 700, 702, 3401, 3402, 3403, 3405, 3408, of the Excerpts from the Consolidated Code of Operating Rules.

The carrier notified the Claimant by letter dated November 5, 1965, that effective at the close of the shift on Monday, November 1, 1965 that Claimant was discharged from the service of the Northern Pacific Railway Company.

"3. We have consistently held that a disciplinary penalty imposed by a Carrier upon an employe can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, excessive, or an abuse of managerial discretion. See: Awards 3874, 4000, 4098, and 4132 of the Second Division. The available evidence does not disclose that the Claimant's dismissal was based upon such unreasonable grounds. He committed a serious offense for which we fail to see any mitigating circumstances. He was discharged for just cause within the contemplation of Rule 34 of the applicable labor agreement."

As stated and restated by this Board, this Division is not in position to substitute its judgment for that of Management and set aside the discharge of Mr. Stewart. This case is not tainted with prejudice or bias.

Rule 35 of the March 1, 1953 Firemen and Oilers' Agreement reads, in part:

"If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and be compensated for wage loss, if any, resulting from said suspension or dismissal."

Mr. Stewart was not unjustly dismissed from the service of the Railway Company effective November 1, 1965. The magnitude of Mr. Stewart's dereliction on October 15, 1965 warranted the imposition of severe discipline. Consequently, Mr. Stewart was justly dismissed from the service of the Railway Company, and the foregoing provisions of Rule 35 are now inoperative.

Rule 35 of the March 1, 1953 Firemen and Oilers' Agreement was complied with prior to the assessment of the discharge; the evidence developed at the investigation conducted on October 21, 1965 sufficiently sustained the charges preferred against Mr. Stewart. The charges preferred against Mr. Stewart warranted the imposition of drastic discipline. The discharge of Mr. Stewart was compatible with his negligence. Consequently, this claim should be denied in its entirety.

(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.

Claimant was operating Carrier's fuel truck No. 1796 on October 15, 1965, on South Spokane Street, Seattle, Washington, when his truck struck the rear end of another vehicle, pushing said vehicle into the rear end of

a vehicle directly ahead of it, thereby causing damage to the other two vehicles as well as Carrier's truck, and injuries to the occupants of these vehicles. Claimant was cited by the Seattle Police Department with violating Section 21-20-180 (following too close) and Section 21-44-020 (no operator's license on person) of the city ordinances.

Claimant stated to the police officer investigating the accident that he applied his brakes but they did not function, and at the hearing, Claimant testified the brakes on the truck failed when he attempted to apply them at a speed of 20-25 MPH.

Claimant was charged by Carrier with violation of Rules M, 700, 702, 3401, 3402, 3403, 3405 and 3408 of the excerpts from the Consolidated Code of Operating Rules. Rule M deals with keeping equipment in safe condition. Rule 700 concerns "Carelessness of a person's own safety or that of others is prohibited." Rule 702 states, in part, that employe must be alert and comply with instructions given by Carrier. Rule 3401 states that: "Driver must have a valid driver's license and/or chauffeur's license in his possession." Rule 3403 provides: "Test brakes to ascertain if functioning properly and check tires for correct inflation at the start of each trip."

At the hearing, Claimant admitted he didn't have an operator's license in his possession at the time of the accident, and he further admitted that he thereby violated Carrier's Rule 3401; he testified that the brakes wouldn't hold at a speed of 25 MPH, but that the brakes of the truck were operating properly immediately prior to the accident; that he had a valid driver's license as of the date of the accident and had not been informed of any suspension of his driver's license by the State of Washington; that he tested the brakes to ascertain if they were functioning properly at the start of his trip in accordance with Rule 3403; that he did not violate Rule 3408, which concerns proper distance for following a vehicle, inasmuch as he was about four or five car lengths back of the vehicle ahead of him; that he pleaded guilty to the city citation for not having an operator's license on his person and was to pay a fine of \$18.00 if paid within seven days, inasmuch as the record shows that the traffic charge of following too close was dismissed by the Traffic Court.

Assistant Special Agent A. W. Olson testified that he contacted the Seattle Police Department in regard to Claimant's driver's license, and was informed by them that Claimant's driver's license was suspended from March 2, 1964.

The Organization's contention is that Carrier meted out excessive punishment to Claimant, who had a perfect driving record as far as Carrier is concerned, over a minor accident in regard to which Carrier failed to prove that Claimant was responsible therefor.

The Carrier's position is that Claimant was operating Carrier's truck without having in his possession a valid operator's license, and that he was involved in an accident due to his own negligence, thus warranting the imposition of severe discipline.

The evidence is clear that Claimant did not have a valid driver's license on his person at the time of the accident. Claimant admitted to this charge,

and was so fined by the Seattle Police Court Judge. It further appears from the record that although the City of Seattle Police Court Judge dismissed the charge of following too close, Claimant was responsible for striking the rear of the vehicle directly ahead of him. Claimant attempted to excuse the accident on the basis of faulty brakes; however, Carrier presented evidence that the brakes were examined immediately after the accident and were found to be functional, although the mechanic did have to adjust them, and the Police Officer's report showed that he found the brakes to be functional immediately after the accident.

Carrier produced evidence showing that Claimant's driver's license had been suspended as of March 2, 1964 and Claimant did not prove that the suspension had been lifted and that he did have a valid driver's license. The fact that Claimant does not have a valid driver's license that is not suspended is important, inasmuch as Carrier has the right to demand that any of its employes driving Carrier's vehicles on public streets be properly licensed and authorized by the state government to drive on public streets. Failing to prove that his driver's license has been reinstated is, in our opinion, of such a serious nature that it warranted the action taken by Carrier in this instance, namely, dismissal from service.

Although Carrier failed to prove violation of two of the rules as alleged, namely, Rule 3402 and Rule 3405, we feel that Carrier's proof of the other charges constituted misconduct on the part of Claimant, which justified the action taken by Carrier against Claimant. Viewed in this vein, it is an inescapable conclusion that Claimant was grossly indifferent to his duties as a truck driver for Carrier and, therefore, Carrier's action in this instance was proper.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1968.