



Award No. 5568
Docket No. 5459
2-SOU-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Carman Painter J. M. Johnson was improperly suspended from service approximately 3:20 P. M., Wednesday, May 25, 1966 and discharged from service May 31, 1966.

2. That accordingly, the Carrier be ordered to reinstate Carman Painter J. M. Johnson to service with all rights unimpaired which includes job rights, seniority rights, pass rights, vacation rights, pay for all time lost beginning May 25, 1966 and hospitalization and life insurance benefits.

EMPLOYEES' STATEMENT OF FACTS: Carman Painter J. M. Johnson, hereinafter referred to as the Claimant, was employed by the Southern Railway Company, Knoxville, Tennessee, hereinafter referred to as the Carrier, in Carrier's shop from 3:30 P. M. to 11:30 P. M., Monday through Friday, with rest days of Saturday and Sunday.

The Carrier summoned the Claimant by written notice dated May 25, 1966 to contact the Manager's Office when he recovered his health sufficiently at which time a date and time would be set for a preliminary investigation. Copy of said notice is attached and marked as Exhibit A. On May 25, 1966, another letter addressed to the Claimant which stated that a preliminary investigation would be held at approximately 3:20 P. M., the same date, i.e., Wednesday, May 25, 1966. The preliminary investigation was held as scheduled and as a result Claimant was suspended from service pending a formal investigation. Copy attached and marked as Exhibit B. On May 27, 1966, formal investigation was held, copy attached and marked as Exhibit C. On May 31, 1966, the Claimant was notified by letter that he was discharged from the service of the company, copy attached and marked as Exhibit D.

Section 3, First (i) of the Railway Labor Act restricts the Board's authority to deciding "disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *." As authority of the Board is limited it is evident that the Board is without authority to order Carrier to rehire former set up Carman Painter Helper Johnson with former rights unimpaired or to order him paid for time lost.

First Division Award 14421, Referee Whiting held that:

"A dismissal for cause terminates the employment relationship and dismissed employe has no enforceable right to be reinstated or rehired by the employer. Reinstatement or rehire of a former employe dismissed from service is within the discretion of the employer. In the absence of any enforceable right to reinstatement there is no basis for this time claim."

In reaffirming the above the Board held in First Division Awards 15316, 15317 and 15318, Referee Colby, that:

"* * * the Board is without power to pass upon the propriety of the penalty imposed or to direct the carrier to reinstate or rehire. The principle laid down in Awards 13052 and 14421 is in all respects reaffirmed and controlling in this case."

That the Board lacks authority to do what is here demanded by the Brotherhood is crystal clear.

(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 were given due notice of hearing thereon.

The facts involved in this claim are not in dispute and, as a result it is clear that the claimant did leave his place of employment without permission, that he did fail to "punch out" even though he passed within a few feet of the point where the clock maintained for that purpose is located, and that he did leave the carrier's property without turning on the lights of his truck, all of which leads to the conclusion that he is guilty as charged.

Considering the fact that in claimant's sixteen-year career with the carrier, this was the first time formal discipline had ever been assessed against him and also, that claimant honestly admitted his mistake, assessment of final dismissal from service was an unjust, discriminatory penalty. Claimant has been out of service since May 25, 1966. Under the circumstances a suspension from

service for over two years is unquestionably adequate punishment for the offense. The carrier is ordered to reinstate claimant to service with seniority and vacation rights unimpaired but with no pay for time lost.

AWARD

Claim disposed of per findings.

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

ATTEST: Charles C. McCarthy
Executive Secretary

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