



**Award Number 5945**

**Docket Number 5767**

**2-NP-SM- '70**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.—C. I. O.  
(Sheet Metal Workers)**

**NORTHERN PACIFIC RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Agreement, the Carrier unjustly removed Earl D. Speed from the Sheet Metal Workers' Brainerd, Minnesota Shop Seniority Roster.
2. That accordingly, the Carrier be ordered to restore Earl D. Speed's name to the Sheet Metal Workers' Roster at Brainerd Shops with seniority, vacation and all other rights unimpaired and compensate him for all time lost resulting from the aforesaid unjust action, including premiums for hospital association dues, life insurance and dependent's hospital benefits.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. Earl D. Speed, Sheet Metal Worker, hereinafter referred to as claimant, entered the service of the Northern Pacific Railway Company, hereinafter referred to as the carrier, at Brainerd, Minnesota on November 21, 1941. Claimant acquired a seniority date as a Sheet Metal Worker on January 5, 1951 in the Carriers' Locomotive Shop in Brainerd, Minnesota, where he has worked continuously as a sheet metal worker except for periods of furlough, with latest furlough occurring December 8, 1967, as a tinsmith, and December 29, 1967, as a pipefitter.

Claimant was in a furlough status when he entered the Brainerd Locomotive Shop on April 2, 1968. Primary purpose of the visit to the shop by the claimant was to contact the Financial Secretary of Local No. 62, Mr. Lester O. Lind, who is also the Local Chairman of the Sheet Metal Workers at Brainerd. Claimant was seeking employment out of town and it was necessary to pay current dues in order to secure union transfer card.

During claimant's visit to the shop, he was approached by Mr. Paul Lippert, Supervisor, Boiler, Machine, Pipe and Tin Shops, who informed claimant that he had been in the shops long enough and he would have to leave, inasmuch as he did not have permission to be in the shops. Words were exchanged and claimant proceeded to the Superintendent's office to secure permission but Superintendent was elsewhere, and claimant returned to Boiler Shop. Mr. Lippert again approached claimant and inquired why he did not

The record in the instant case does not show that the Claimant's dismissal was influenced by such unreasonable or illogical considerations on the part of the Carrier."

In Award No. 4098 this Division, with Referee Charles W. Anrod sitting, restated this same principle as follows:

"3. The law is well settled that a disciplinary penalty imposed by a Carrier upon an employe can be challenged before this Board only on the ground that it was arbitrary, capricious, excessive or an abuse of managerial discretion. See: Awards 3874 and 4000 of the Second Division."

In Award No. 4199 this Division, with Referee Charles W. Anrod participating, said:

"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. 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 the management and satisfy the discipline imposed on Mr. Speed. This case is not tainted by prejudice or bias.

Rule 39 of the July 1, 1955 Shop Crafts Agreement was complied with prior to the assessment of discipline. Consequently, this claim should be denied in its entirety.

**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, a furloughed employe, came onto Carrier's premises where he had formerly worked. As the result of an altercation between Claimant and a foreman, Claimant was charged with violation of the rules. Hearing and investigation were held, and Claimant was dismissed.

Analysis of the procedural objections raised by the Organization fails to disclose that Claimant was prejudiced thereby.

With respect to the merits of the dispute, there was conflicting testimony as to certain events. However, the weight of the testimony and evidence with respect to the salient facts giving rise to the discharge was sufficient to support Carrier's action.

**A W A R D**

Claim is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

**ATTEST: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June, 1970.