

Award No. 6000
Docket No. 5860
2-CMSIP&P-EW-'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. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company unjustly, improperly, and without supporting the burden of proof, dismissed District Lineman E. L. Winters of Avery, Idaho, from service effective March 1, 1969.

2. That accordingly, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to restore Mr. E. L. Winters to his former position as District Lineman with all rights unimpaired, including compensation for all time lost and all other rights and benefits, retroactive to March 1, 1969.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, employed E. L. Winters, hereinafter referred to as the claimant, as a groundman in the communication department on September 21, 1954. He was advanced to an apprentice on May 3, 1954 and to lineman on June 14, 1958.

Claimant was assigned to a district lineman position on October 2, 1967 and remained in this capacity until his dismissal from service on March 1, 1969. The carrier notified the claimant to submit to a formal investigation at 9:00 A. M., February 19, 1969 at Alberton, Montana. The carrier dismissed the claimant from its services effective March 1, 1969. On June 12, 1969, the carrier offered to reinstate the claimant on a leniency basis with his employment restricted to lineman in a crew.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to make a satisfactory adjustment. The agreement of September 1, 1949, as subsequently amended, is controlling.

We see no valid reason in this matter to reverse the carrier's assessment of discipline." (Emphasis ours.)

and denied the claim.

SUMMARY

Substantial evidence adduced at the hearing supports the fact that Mr. Winters was insubordinate (thereby violating Rule M-702) and that he operated his snowmobile without a line-up (thereby violating Rules 414 and 500). For such disobedience, he was suspended from service from March 1 through June 15, 1969. Such discipline was not excessive, but entirely justified under the circumstances. Boards of adjustment have held innumerable times that they will not substitute their judgment for the carrier's or reverse or modify discipline unless there is a showing of arbitrariness, capriciousness or bad faith. No such showing can be made here. All procedural and substantive requirements of the agreement were met. The carrier's representative who conducted the hearing was eminently fair, and the record reveals he sought only to determine the truth.

This is the second time Mr. Winters has been disciplined for violating the rules. His record shows that he was suspended from service from June 8 to October 8, 1962, for not properly parking a carrier-owned truck on a hill in a farmer's barnyard, resulting in the truck getting away, rolling down the hill and striking a barn, causing \$1,000 damage to the truck and \$300 damage to the barn.

In the light of the above, the claim must be denied.

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.

An analysis of the record indicates that Carrier was warranted in the action that it took, and did not act in an arbitrary or capricious manner.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 24th day of September, 1970.

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