

Award No. 6043
Docket No. 5873
2-AT&SF-MA-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Machinists)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
— Coast Lines —

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current controlling agreement Machinist F. H. Carter of San Bernardino, California, was unjustly dismissed from the service of the AT&SF Railway Company on January 10, 1969.

2. That accordingly the carrier be ordered to reinstate this former employe to service with all seniority, service rights, all net wage loss, and payment in lieu of all other accrued contractual benefits to which otherwise entitled had he continued to remain in carrier service dating from his improper discharge on January 10, 1969.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the AT&SF Railway Co., hereinafter referred to as the carrier, and System Federation No. 97, Railway Employees' Department, AFL-CIO, representing among others the International Association of Machinists and Aerospace Workers, parties to this dispute, identified as "Shop Crafts Agreement", effective August 1, 1945, as amended (reprinted January 1, 1967, to include revisions), a copy of which is on file with the Second Division, National Railroad Adjustment Board, and is hereby referred to and made part of this dispute.

Mr. Frank H. Carter, hereinafter referred to as claimant, was charged in formal investigation held at San Bernardino, California on December 23, 1968, with being absent from duty from August 14, 1968, until December 13, 1968, when he would have been able to report for duty had the carrier allowed.

Carrier asserts that such absence from duty was without express permission by local management and thus a violation of Rule 16 of the general

"- - - and payment in lieu of all other accrued contractual benefits to which otherwise entitled - - -."

which is non-specific since carrier has no knowledge of the "benefits" to which petitioner refers and it is submitted that this portion of the statement of claim should be given no consideration under any circumstances.

Referee Howard Johnson when denying the employees' claim covered by Second Division Award No. 5049 stated:

"If the claim as made and processed on the property had been that Rule 19 had been violated, it would have been difficult, if not impossible, to determine what Claimant's wage loss would have been. In the case of an employe able and willing to work the regular hours permitted and expected of him under the Agreement, his wage loss would be 40 hours' pay per week; but in view of Claimant's work record, his loss would have been indeterminate."

In conclusion, respondent submits that it has produced substantial evidence to prove that:

- (1) Claimant Carter was guilty of willfully absenting himself from duty without proper authority in violation of Rule 16 of the general rules for the guidance of employes,

and

- (2) This violation, standing alone, constituted sufficient grounds for claimant's dismissal from service.

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 charged in formal investigation held on December 23, 1968, with being absent from duty from August 14, 1968, until December 13, 1968. The facts disclose that during the period of time in question, this employe was serving a 90 day jail sentence for driving on a suspended driver's license. On August 20, 1968, this Claimant wrote a letter to Carrier informing Carrier of the jail sentence he was serving. On October 24, 1968, Claimant wrote a further letter to the Carrier stating that he was still interested in his job and that he expected to be back on or about the 7th or 8th of November. However, because of some personal problems, Claimant did not report for duty until December 13, 1968. Upon reporting for duty, Carrier refused to accept his services, and on that date, he was cited to appear before a formal investigation. He was found guilty of being absent without authority during the 122 day period commencing August 14, 1968,

and ending December 13, 1968. Carrier contends that this unauthorized absence was a violation of Rule 16 of the General Rules for the Guidance of Employees, Form 2626 Standard, 1966 issue. This rule is as follows:

“Employees must obey instructions from the proper authority in matters pertaining to their respective branches of the service. They must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations.

Employees must report for duty as required and those subject to call for duty will be at their usual calling place or leave information as to where they may be located. They must not absent **themselves from duty**, exchange duties or substitute other persons in their places **without proper authority.**” (Emphasis supplied.)

The Organization contends that Carrier acted in an arbitrary and capricious manner; and that the punishment of dismissal from service was too severe for the offense as set out.

Had Claimant reported for duty promptly on November 11, when he was released from jail, Carrier's decision on the investigation might have been construed to be harsh and disproportionate to the offense. However, the facts disclose that Claimant failed to account for the period from November 11 until December 13, the date he reported to work. Therefore, the action of Carrier can not be held as arbitrary or capricious. It is well settled that this Board can not substitute its judgment for that of Carrier in discipline cases where substantial evidence has been produced and no rule violation is evident. Therefore, this claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1970.