

Award No. 6247
Docket No. 6088
2-SOU-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Don J. Harr 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 C. F. Sims, Birmingham, Alabama, was improperly discharged from service October 11, 1969.

2. That accordingly, the Carrier be ordered to restore Carman C. F. Sims, Birmingham, Alabama to service and be paid for all time lost from October 11, 1969 until such time he is restored to service and granted vacation due or pay in lieu thereof, and also, that the Carrier pay health and welfare and death benefit premiums during this time.

EMPLOYEES' STATEMENT OF FACTS: Carman C. F. Sims, Birmingham, Alabama, hereinafter referred to as the claimant, was employed by the Southern Railway Company, hereinafter referred to as the carrier, at Birmingham, Alabama, and was removed from service October 11, 1969, charged with, "insubordination brought against you by your immediate supervisor, C. H. McGregor, more specifically your refusing to discharge your duties as instructed."

Formal investigation was set for 2:00 P.M., October 16, 1969, six (6) days from October 11, 1969 and was held.

In a letter dated October 22, 1969, Claimant was advised by Mr. J. T. Freeman, Carriers master mechanic, that he was guilty as charged and therefore dismissed from the service of Southern Railway Company.

In a letter dated December 11, 1969, Claimant's Local Chairman filed a claim on behalf of claimant with carrier's Master Mechanic, Mr. J. T. Freeman.

This dispute was subsequently handled with all of the carrier's officers designated to handle such matters in compliance with the current Agreement, all of whom have refused or declined to make satisfactory settlement.

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 Organization's objection to affidavits attached to the Carrier's rebuttal is valid and is sustained under the provisions of Circular No. 1 of the National Railroad Adjustment Board.

We find, on the merits of the dispute, that none of the substantial procedural rights of the Claimant under the Agreement were violated. There was substantial evidence presented in the investigation conducted on October 16, 1969, to support the charge against the Claimant.

Considering the nature of the charge and Claimant's prior record, the action of the Carrier cannot be held to be arbitrary, capricious or unreasonable.

AWARD

Claim of Employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, 23rd day of February 1972.