

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GREAT NORTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of J. A. Lambert, First, that he be restored to his former position as Motor Car Repairman at Delta, Spokane Division; Second, that he be paid the difference between the rate of pay received as Assistant Motor Car Repairman and that which he would have received as Motor Car Repairman, retroactive from June 16, 1937."

JOINT STATEMENT OF FACTS: "J. A. Lambert, Motor Car Repairman, Spokane Division, \$164.28 per month, was, on June 16, 1937, demoted to position of Assistant Motor Car Repairman, \$138.16, for alleged failure properly to carry out the duties of his position. Effective August 1, 1937, rate of pay for position of Motor Car Repairman was increased to \$176.43 per month, and of Assistant Motor Car Repairman to \$150.31 per month."

POSITION OF EMPLOYEES: "As a matter of information to the Board we wish first to relate a brief history of the petitioner's, Mr. Lambert's service record as motor car repairman.

"Prior to October 1st, 1931 the territory which now comprises the Spokane Division was operated as two divisions, namely; the Spokane Division and the Cascade Division. The Railroad maintained a motor car shop on each of the divisions, one at Spokane on the Spokane Division, and one at Delta on the Cascade Division, with motor car repairman in charge of and performing the motor car work on each of the two divisions.

"In September of 1922, J. A. Lambert was assigned as motor car repairman at Spokane having jurisdiction over motor car repair work on the Spokane Division. When the Spokane and Cascade Divisions were consolidated on October 1, 1931, the motor car repairman, Mitchke, on the Cascade Division, stationed at Delta, was reclassified as an assistant motor car repairman. J. A. Lambert being the senior of the two was retained as motor car repairman at Spokane with jurisdiction over the entire consolidated Spokane Division. In February 1937, the Railway closed its motor car repair shop at Spokane and transferred Motor Car Repairman J. A. Lambert from Spokane to Delta, the Assistant Motor Car Repairman Mitchke, being retained at Delta, working as an Assistant, under Motor Car Repairman Lambert.

"Under date of June 7, 1937, the following quoted letter was addressed to Messrs. J. A. Lambert and J. J. Mitchke by Division Roadmaster A. Mitguard:

dismissed nor suspended, but he was demoted from position of Motor Car Repairman, in charge of the shop, to Assistant Motor Car Repairman, employed therein under other supervision. The Carrier feels that such discipline was neither unwarranted nor excessive.

"The claim for reimbursement of difference in salary is inconsistent with the manner in which this complaint was handled. Reconsideration of Lambert's case was declined to him direct by the Superintendent on June 29, 1937. Matter was then taken up by the organization, and declination was repeated to the Assistant General Chairman on July 26, 1937. Matter appears then to have been dropped for some six months, next appearing as a request for leniency addressed to the General Manager on January 25, 1938, and declined on February 2, 1938. Matter was then taken up promptly as an appeal from the General Manager's decision, and handled more or less continuously thereafter. However, until such appeal on March 11, 1938, no presentation of anything but a request for leniency had been made to anyone, and certainly the Carrier had nothing to do with the delay of six months in appealing beyond the division officers. There is no schedule rule limitation on time of appeal, it is true; however, no claim for reimbursement had been mentioned to anyone, or in fact anything but a request for remission of the permanent demotion, until some year after the demotion became effective during half of which period the matter had laid dormant with the Organization. The addition of a retroactive money claim thereafter is inconsistent with such handling."

OPINION OF BOARD: The employe involved in this dispute was demoted from his position as motor car repairman at Delta, Washington, for failure to put into effect instructions as to a change in working hours and for leaving certain inflammable material in building (shop) overnight. The claim is for his reinstatement and for the loss in pay sustained as the result of the demotion.

In several cases that have been before this Division involving disciplinary action imposed by a carrier the Division has shown a reluctance to interfere, except in those cases where it was shown that the employe had not been accorded a fair trial. There is no suggestion in this case that the employe involved was not accorded a fair trial and the action of carrier should be sustained unless it is found that the evidence does not sustain the action taken.

The record shows that the regular force at the repair shop consisted of claimant and one assistant repairman. On April 16, 1937, orders were issued to lengthen the lunch period from 30 minutes to one hour so that the quitting time thereafter would be 4:30 P. M. instead of 4:00 P. M. This change was made to establish uniformity in the several departments. The record also shows that there is in effect a rule against leaving inflammable material in the shop overnight.

Claimant left his work in the shop on the morning of April 17 for a road inspection trip with certain officials of carrier, which lasted ten days. He returned to the shop on April 26. He forgot about the instructions as to the change in the length of the lunch period, only taking 30 minutes for lunch and quitting work at 4:00 P. M. on April 26. He also left in the shop on this day several gasoline cans, some of which contained a little gasoline, a dope bucket with some waste and gasoline in it, and some inflammable waste about the shop. The superintendent arrived at the shop on an inspection trip a few minutes after claimant and his assistant had gone and found the condition outlined above, for all of which claimant was demoted.

Two circumstances make this case an exception to the general rule. First, claimant was not charged with lack of ability to satisfactorily perform the work of the position he occupied. He had been in carrier's service for many years and had held the position of motor car repairman for many years, all of which indicates that his work was satisfactory.

Secondly, the assistant who was promoted to claimant's position was, in the eyes of the average person, equally guilty with claimant for the more important infraction—leaving inflammable material in the shop overnight. While the claimant as head of the shop should be held responsible for the infraction of the rule, no reasonable excuse can be offered for the failure of the assistant to cooperate in requiring compliance with the rule. On the day in question an extra force was working in the shop and this brought added responsibilities to both regular employees.

What is said above relates only to the permanent character of the discipline sentence. Claimant deserved to be disciplined but misdemeanors have never carried life sentences and we know of no reason why the same rule should not apply in cases of this character. In the opinion of the Board the discipline imposed was entirely too severe.

The claimant also requests reimbursement for loss in pay sustained as the result of the demotion. Since we have found that claimant deserved to be disciplined this part of the claim must be denied. Claimant should be restored to the position of motor car repairman but without reimbursement for the loss in pay sustained as the result of the demotion.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That claim should be sustained to the extent indicated in the Opinion.

AWARD

Claimant should be reinstated without reimbursement for any loss in pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1939.