

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TEXAS AND PACIFIC RAILWAY

STATEMENT OF CLAIM: "Claim of Employees' Committee, first; that the actions for which Hudson was removed from the service did not interfere in any way with his work as a section foreman, and caused no inconvenience to the Railroad Company or any of its officers, and were all outside of his regular working hours; Second; that H. H. Hudson should be reinstated as section foreman with full seniority rights and paid for all time he is out of the service."

EMPLOYEES' STATEMENT OF FACTS: "H. H. Hudson was removed from the service as section foreman at Fort Worth, Texas, February 18, 1939. He received the following letter under date of February 20, 1939:

Fort Worth, Texas,
Feb. 20, 1939.

Mr. H. H. Hudson,
Fort Worth, Texas.

This is to advise that you were removed from the service as Section Foreman, Section 236, Fort Worth, for having irregular business transaction with men employed directly under your supervision.

(Signed) C. Stockman,
District Roadmaster."

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CARRIER'S STATEMENT OF FACTS: "Section Foreman Hudson was dismissed from the service account having irregular business transactions with men under his supervision."

OPINION OF BOARD: Claimant, H. H. Hudson, a section foreman, was dismissed from service because, as said, of his "irregular business transaction with men under your supervision." The charge was developed some two years after he had been transferred by the Carrier from the place of the alleged offending, and wholly apart from those who testified against him, to another section considerably removed, and with other laborers. The showing on the part of the Carrier, dispassionately weighed and fairly appraised, was, as we think, of doubtful probative force. The witnesses were some of the laborers of his former gang, and they were examined by Carrier representatives at an ex parte hearing. The questions propounded were so framed as to make clear the character of answers desired; or, to use a familiar expression, the questions were leading.

After claimant's dismissal—not before—he was granted a hearing before responsible Carrier officials; but not then, or at any time, although it was demanded in his behalf, was he permitted to face the adverse witnesses or enabled to subject them to cross-examination. Testifying for himself, he made formal and categoric denial of all that had been said against him, and was corroborated in essential details by a witness. Both claimant and his witness were cross-examined by Carrier representatives. He also submitted affidavits of two others tending to show he was not guilty of the complaint which constituted the basis of his removal from service. On the whole, we are persuaded the record does not warrant conclusion of guilt. It is worthy of remark, we think, and not without importance to our inquiry, that nothing thought to militate against claimant's conduct had to do with his duties as a section foreman. Indeed, it was conceded that his services in that regard were entirely satisfactory.

There was evidence, however, and not denied, that claimant's wife had sold some cheap articles of furniture, for trifling sums, to be sure, to one or more of the laborers in her husband's section gang. That, as we appraise the fitness of things, should not have been countenanced by him; and that the sales were of her own property rather than his, does not operate to absolve him from the control he should have exercised in such situation.

The record considered, we are disposed to the view that while reasonable discipline was justified, his dismissal was of unwarranted severity. Therefore, his seniority to suffer no impairment, claimant should be restored to the service; but because of what he permitted to be done by his domestic household, as related, wage loss to the time of this award would be a reasonable disciplinary order. See Awards 36, 136, 325, 624, 763, 775, 789, 913, and 1033.

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 claimant should be restored to service, with full seniority, but without pay for time lost.

AWARD

Effective within five days after reporting for duty, and with seniority rights as of the date of dismissal, but without recovery of wage loss, claimant shall be restored to service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1940.