

Award No. 10582
Docket No. MW-9878

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Assistant Welder Paul C. Nolan was not guilty and was not proven guilty of the charge that he was insubordinate and failed to comply with the instructions of proper authority while on duty at Silver Crown, Wyoming about 8:10 A. M. August 29, 1956 and, in consequence thereof,

(2) Assistant Welder Paul C. Nolan's service record be cleared of the entry of a censure placed thereon and that he be reimbursed for the fifty-three (53) hours of pay he lost account of improperly withheld from service on the basis of improper and unproven charges.

EMPLOYES' STATEMENT OF FACTS: The claimant, Mr. Paul C. Nolan, was regularly assigned to the position of assistant welder, under the supervision of Head Welder B. M. Waller.

At about 8:10 A. M. on August 29, 1956 the claimant was relieved from duty by Head Welder Waller, account of alleged insubordination and failing to comply with the instructions of the Head Welder.

In a letter dated September 4, 1956 the claimant was instructed by Superintendent Hoover to arrange to attend an investigation to be held in the Superintendent's Office at Denver, Colorado at 8:00 A. M. on Thursday, September 6, 1956 in connection with the afore-mentioned alleged charges.

The investigation was held at the designated time and place. The heading, those present and the charge as recorded in the transcript of the investigation is as follows:

"Transcript of investigation held in Superintendent's Office, Denver, Colorado, 8:00 A.M. September 6, 1956, in connection

principle. Just a few of the Third Division Awards expressing this rule are 71, 135, 2498, 6360, 6598 and 6924.

The investigation in this case was conducted in a fair and impartial manner and at the conclusion thereof the claimant and his representative took no exceptions thereto and agreed that they had been afforded full opportunity to present their testimony and to ask any questions they desired concerning the testimony of others.

The testimony taken from the claimant and from his foreman, Head Welder Waller, leaves no room for any question that the claimant failed to comply with instructions of proper authority and that the Carrier would have been justified in dismissing him from its service had it so decreed. The claim, therefore, must be denied.

To sustain a claim such as this would function to avoid the proper exercise of disciplinary control.

The Carrier affirmatively states that all data herein and herewith submitted has previously been made known to the Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The discipline imposed by the Carrier in this case is based upon the alleged violation of Carrier's General Notice Rules C, D and H as set forth in the record. (Page 4)

Claimant bases his claim on Rule 20(c) which provides:

"If the charge against an employee is not sustained, it shall be stricken from the records. If the employee has been suspended or dismissed from the service and the charges are not sustained, such employee will be reinstated with his seniority rights unimpaired and be compensated for wage loss, if any, suffered by him resulting from said suspension or dismissal, less amount earned in any other employment.

This Board has studied the awards cited by Carrier supporting its contention that in disciplinary cases it is not the function of the Board to determine the creditability or weight the evidence nor substitute its judgment for that of Management as to the degree of the discipline. Awards 5933 (Parker); 4479 (Carter); 891 (Garrison); also Awards 3827, 3734, 3235; however in this record there is no evidence that Assistant Welder Paul C. Nolan violated the Agreement or the Rules in any respect. The facts are substantially undisputed, and do not establish any violation or insubordination. The Claimant's work is not at issue. Where it is shown that discipline is unwarranted, the Carrier's exaction of discipline cannot stand. See Awards 6827, 6116, 6056, 5787, 5543, 4325. We find it necessary to hold in this case that the Carrier's action was arbitrary, unjust and without foundation in law or fact.

(1) The discipline imposed by the Carrier was arbitrary, unjust and without foundation in law or fact.

(2) That the record of Assistant Welder Paul C. Nolan be cleared and that he be compensated for the 53 hours lost time, less

any earnings he may have had during said 53 hour period from other employment.

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 Employees involved in this dispute are respectively Carrier and Employees 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 the Carrier violated the Agreement.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1962.