

Award No. 10794
Docket No. MW-11821

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The dismissal from service of Bridgetender George Duke on August 13, 1958 and of Bridgetender R. M. Skinner on September 25, 1958 was improper, without just and sufficient cause and in violation of the effective agreement.

(2) Messrs. George Duke and R. M. Skinner now be restored to the position of Bridgetender with seniority, vacation and all other rights unimpaired account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. R. W. Skinner was dismissed from the Carrier's service on September 25, 1958 on the basis of alleged insubordination as may be noted from the following:

"LOUISVILLE & NASHVILLE RAILROAD COMPANY

OFFICE OF Assistant Superintendent at Mobile, Alabama,
September 25, 1958

R. W. Skinner, Bridgetender
c/o Mr. C. T. Yarbrough
Mobile, Alabama

The attached Discipline Bulletin Order No. 81, dated September 25th, 1958, applies to you, for insubordination in refusing to show B&B employe J. W. Carver the proper operation of the Rigolets drawbridge machinery at Rigolets Bridge No. 34, Rigolets, Louisiana, on June 21, 1958 as instructed.

C. B. Matthews"

standable and were material to the proper and efficient operation of the carrier's business. There was no justifiable excuse for the willful refusal of claimants to comply with them, and in so doing they were guilty of insubordination which simply cannot be tolerated and fully justified their dismissals. This and other Divisions of the National Railroad Adjustment Board have so held in numerous awards. For instance, in its Award 4951 this Board said:

"The record clearly shows that Claimant refused to carry out the instructions of his foreman. Such conduct is very detrimental to the Carrier and is of sufficient magnitude to warrant dismissal. The evidence, including the testimony of Claimant himself is sufficient to sustain the action of the Carrier."

CONCLUSION

In conclusion carrier reiterates that this claim is improperly before this Division and should be denied for want of jurisdiction to decide it.

If for any reason the case should be considered on its merits, carrier submits that claimants demonstrated conclusively that they are not the type of individuals the carrier should be asked to continue in its service. Their dismissals were not arbitrary, unreasonable, or unjust, and the discipline assessed by the carrier should not be disturbed.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The Record before us shows that each of the grievants was duly apprised of the charges against him; that notice of hearing was properly given; that separate hearings were held within a reasonable period of time; and that at the respective hearings, the particular claimant was present in person and afforded the opportunity of representation and to present evidence in his behalf. It is worthy of note that cross-examination of accusing witnesses was not restricted.

After careful examination of the entire Record, the Award cited, and the argumentation presented by and in behalf of the parties, we do not believe that the complained of action of the Carrier "was improper, without just and sufficient cause and in violation of the effective Agreement."

The Claim, therefore, must be denied.

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 Agreement was not violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962.