

Award Number 17514

Docket Number MW-18133

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

- (1) The discipline assessed to Messrs. Charles E. Maylee, W. E. Davis and V. D. Stanford was without just and sufficient cause and on the basis of unproven and disproven charges.
- (2) The discipline assessed to Mr. John D. Maylee was without just and sufficient cause; on the basis of unproven and disproven charges; and on the basis of charges other than those placed against him and other than those on which hearing was held.
- (3) That each of the above named four (4) employees be reinstated to service with seniority and all other rights unimpaired and that they be reimbursed for all wage loss suffered. (System File E 41-140 E 41-141).

OPINION OF BOARD: The Organization requested a hearing in regard to Carrier's charges against the four Claimants herein that they walked off their jobs as laborers of a Section Gang at Bowling Green, Mo. on April 2, 1968. The four claimants were present at the hearing.

The facts developed at the hearing reveal that the Section Gang at Bowling Green, Mo. were laying rail on April 2, 1968. Employee Swarthout received permission from his foreman to leave his job on the date in question for physical reasons. Claimants and three other employees left their jobs. It is disputed as to the amount of rain that was falling on the morning in question. Carrier alleges that it was raining lightly at the start of the shift and then had stopped by the time Claimants walked off the job. Fifteen members of the Section Gang remained on the job on said date. It was brought out at the hearing that a Signal Gang, working nearby, continued to work on said date. The Claimants, with the exception of John D. Maylee, were offered reinstatement without back pay by Carrier, but this offer was refused. The Claimants were eventually dismissed from the service of Carrier.

The Organization contends that the Claimants received permission from their foreman to cease work on the day in question due to heavy rain; that an emergency was not involved and thus poor judgment was used by Carrier in continuing to lay rail in inclement weather; that foreman Silvernail testified that he had heard that Claimant John D. Maylee was ill on said date.

Carrier's position is that it conclusively showed at the hearing that Claimants deserted their jobs without permission; that the weather condition on the date in question did not authorize Claimants to leave their jobs without permission; that Claimant John D. Maylee falsified his employment application, justifying his dismissal; that Claimant John D. Maylee failed to make a request for a hearing in regard to Carrier's additional charge that he falsified his application for employment, thus amounting to an admission of the facts of said charge.

The record clearly discloses that Claimants did not receive Carrier's permission to leave their jobs on the date in question. Claimants did not establish by competent evidence that they were in immediate danger to themselves, property or the public. As was said by this Board in Award No. 14067:

"The rule is well established that an employe is required to carry out his assigned duties, even where he feels aggrieved. He is forbidden to resort to self-help, but is free to process his grievance via the established grievance machinery. He cannot refrain from performing his assignment with impunity. . . ."

Therefore, we feel that Carrier met its burden of proving Claimants guilty as charged.

In view of the fact that Claimant John D. Maylee failed to make written request for hearing as provided for in the Agreement, on the charge that he falsified his application for employment, and weighing his prior record we will sustain Carrier's penalty of dismissal imposed against him.

Taking into consideration the nature and seriousness of the charge against the other Claimants, we find that the penalty of dismissal assessed against Claimants Charles E. Maylee, W. E. Davis and V. D. Stanford was excessive; and we hereby set aside their dismissal from service, and Carrier is ordered to reinstate said Claimants with accumulated seniority, but without compensation for time lost.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated in accordance with Opinion.

A W A R D

Claim partly sustained and partly denied in accordance with the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1969.