

Award No. 5360

Docket No. MW-5271

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

- (1) The Carrier violated the agreement when it dismissed Section Foreman Gillermo Hjar on September 27, 1949;
- (2) Section Foreman Gillermo Hjar be returned to his position of Section Foreman at Gallinas, New Mexico, with seniority and vacation rights unimpaired;
- (3) Section Foreman Gillermo Hjar be paid the wage loss suffered from September 27, 1949 until such time as he is returned to service.

OPINION OF BOARD: Petitioner was duly charged with a rule violation and hearing thereon was held. A decision of violation was returned and the penalty was discharge from Carrier's employment.

Petitioner here questions the sufficiency of the evidence and testimony adduced at the hearing to support the finding. The Schedule imposes upon Carrier the obligation to accord to an accused a fair and impartial hearing. Among other things this involves passing upon the weight to be given to the testimony and the credibility of the witnesses. The important point in connection thereto is the matter of whether there was any testimony to give weight to and to believe or disbelieve. We have carefully reviewed the record herein and find there was testimony to support the finding. This view is in no sense a criticism, express or implied, of the theory, means, or manner in which Petitioner tried and presented his case. Had this Board tried the case it is a matter of conjecture that it might have believed Petitioner and his witnesses and entirely disbelieved the testimony adduced by Carrier. In the absence of a showing Carrier's action was unreasonable, arbitrary, and capricious we may not substitute our views for those of the hearing officer assuming that had we tried the case we would have arrived at a different finding.

The above and foregoing views also have application to the penalty assessed.

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 Schedule was not violated.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of May, 1951.