

Award No. 362

Docket No. 353

2-Va-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That C. A. Welch, machinist, formerly employed by The Virginian Railway Company at Mullens, W. Va., be restored to service with seniority unimpaired and compensated for all time lost since and including January 14, 1935, the date on which he was held out of service, and until he is returned to service.

EMPLOYEES' STATEMENT OF FACTS: By an official bulletin posted on the regular bulletin board of The Virginian Railway Company in its Mullens, W. Va. shops, Machinist C. A. Welch was laid off effective four o'clock P. M., Friday, January 11, 1935, until seven o'clock A. M., Monday morning, January 14, 1935, at which time C. A. Welch reported for work but found his card was up and he was held out of service until Friday, January 18, 1935, when he was called to the office of the general foreman at Mullens, W. Va. shops and charged with conduct unbecoming an employee in that he was accused of being intoxicated between the hours of three and five o'clock A. M., Saturday, January 12, 1935, at which time he was off duty and not subject to return thereto until seven o'clock A. M., Monday, January 14, 1935, which was a period of fifty hours following the time he was accused of being intoxicated. As a result of this accusation, Mr. Welch was discharged from the service of The Virginian Railway Company, and is still out of the service. His case has been handled by his representatives up to and with the highest official of The Virginian Railway Company designated to handle grievances of this nature, and management has offered to settle this case by returning Welch to the service with his seniority unimpaired but without any pay for time lost.

POSITION OF EMPLOYEES: We claim that since Machinist C. A. Welch was off duty effective four o'clock P. M., Friday, January 11, 1935, having been furloughed by official notice posted on regular bulletin board, said notice stating the lay-off was to be effective until 7:00 o'clock A. M., Monday, January 14, 1935, that, therefore, when Welch reported for work at 7:00 A. M., Monday, January 14, 1935, he then and there met all normal demands that could justly be made upon him by his employer and should have been allowed to go to work.

We further claim that it was unjust and unreasonable to hold him out of service until January 18, four days thereafter and then force him to

or his representatives until March 15, 1938, more than three years thereafter. See letter of Mr. J. W. Munsey dated September 26, 1938, addressed to Mr. L. A. Markham, assistant to president, Virginian Railway Company, marked Exhibit C.

Subsequent to the request of Mr. Munsey in his letter of March 15, 1938, that Mr. Welch be reinstated with seniority rights unimpaired and pay for time lost from January 18, 1935, the carrier developed that shortly after Mr. Welch was dismissed, he secured employment with the Keystone Motor Company, Keystone, W. Va., which lasted about three months.

Subsequently, he contracted with a coal company at Bishop, W. Va., to get out mine timber. This work lasted about nine months, after which he secured work in the mine, where he remained until July, 1936, at which time he accepted employment with the DuPont Company in its plant at Belle, W. Va., and remained there until February 18, 1938, when he was laid off.

It will be noted from the above that Mr. Munsey's request dated March 15, 1938, in behalf of Mr. Welch was made after Mr. Welch was cut off at Belle, indicating that the charge of the employees that Mr. Welch was unjustly dismissed was an afterthought conceived shortly after he was cut off at Belle and is being used as a subterfuge for reasons which are obvious.

Enclosed is copy of correspondence between Mr. J. W. Munsey and Mr. L. A. Markham relative to this case marked Exhibit D, from which the Board will note that the carrier offered to settle this case by restoring Mr. Welch to the service with seniority rights unimpaired, but without pay for time lost, which offer was predicated on the assumption that the time Mr. Welch had been out of the carrier's service since his dismissal was ample discipline to effect the change in his habits the carrier desires for the best interest of all concerned.

For the reasons we have hereinbefore stated, the carrier requests that the claim of employees be denied.

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

There is insufficient evidence to indicate that Machinist C. A. Welch was guilty of drunkenness.

Carrier, therefore, was unjustified in discharging Machinist Welch.

AWARD

Claim sustained.

Compensation awarded to C. A. Welch to be determined by difference between the net amount he actually earned during the time he was laid off and what he would have earned had he continued to occupy his former position. Period of time shall be the time when he was wrongfully discharged until the time of his re-employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd Day of August, 1939.