

Award No. 1696
Docket No. 1621
2-PRR-URRWA-CIO-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

THE UNITED RAILROAD WORKERS OF AMERICA, CIO
THE PENNSYLVANIA RAILROAD COMPANY
(Eastern Region)

EMPLOYEES' STATEMENT OF CLAIM: That within the meaning of the Controlling Agreement the Pennsylvania Railroad Company stands in violation thereof, in that assigned laborer John J. Reitz has been unjustly dealt with on the property of the Pennsylvania Railroad when he was subject to discipline by dismissal on February 26, 1952.

Therefore, the Employees claim this employee should be restored to service of the Pennsylvania Railroad with no impairment of seniority rights and that he be compensated for all monetary loss due to this dismissal.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties hereto dated July 1, 1949, copy of which is on file with the Board and is by reference hereby made a part of this statement of facts.

At Enola Diesel engine house, the Pennsylvania Railroad Company, hereinafter referred to as the carrier, employs certain assigned laborers. The aggrieved, John J. Reitz, hereinafter referred to as the claimant, was employed as an assigned laborer until February 26, 1952.

Under date of February 11, 1952, the claimant was notified that he was charged with creating a disturbance resulting in an alleged personal injury to a fellow employee at 10:45 A.M., February 1, 1952. The trial was held as scheduled, and as a result of the trial the claimant was disciplined by dismissal. The claimant subsequently appealed the discipline to the superintendent and the appeal was denied. See employees' Exhibit A submitted herewith.

The claimant later appealed to the general manager and this appeal was also denied. See employees' Exhibit B submitted herewith.

POSITION OF EMPLOYEES: It is submitted that the claimant was dismissed without just cause and has been unjustly deprived of his service rights since February 26, 1952.

We submit as employees' Exhibit C a copy of the trial transcript, in which the carrier tries to prove the guilt of the claimant as charged, creating a disturbance resulting in personal injury to a fellow employee at approxi-

A similar statement was made in Award No. 373, Third Division, Referee I. L. Sharfman:

"It has been held repeatedly by this Board that where the Carrier has not acted arbitrarily, without just cause, or in bad faith, the judgment of the Board as to the propriety of dismissals will not be substituted for that of the Carrier. In this case, there may be differences of opinion as to the importance and significance of particular items of the service record of the petitioner, but there can be no doubt that there is ample evidence of record of convincing character to support the charge of 'unsatisfactory service' upon which the dismissal was based. It is questionable whether the Board could with any show of reason reach a conclusion different from that of the Management even if it were itself to exercise the discretion in this sphere which is vested in the management; but there is certainly no ground for concluding that the management was without reasonable basis for its disciplinary action."

The carrier contends that there is ample evidence of record to support the charge against the claimant; that there is no evidence that its action in disciplining the claimant in this case was in any way arbitrary, malicious, or in bad faith; and contends that, on the other hand, the discipline was only imposed upon the claimant after full investigation and trial, and on the basis of undisputed evidence of the claimant's guilt of the offense with which charged.

Therefore, your Honorable Board is respectfully requested to deny the claim in this matter.

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 employes 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.

On February 1, 1952, a stink bomb was thrown through an open window in the Fuel Oil Pump Building at Enola Diesel Engine House. The claimant, John J. Reitz, a laborer, admitted that he threw the stink bomb in question. At the time of this occurrence, an electrician and an electrician helper were in the Fuel Oil Pump room, and when the electrician helper attempted to retrieve the bomb, claimant Reitz climbed through the window, and in the altercation that ensued the electrician helper struck the left side of his chest against a portion of the filter of the fuel oil pump equipment, resulting in a "contusion of left chest anteriorly."

The employes contend that the cleaning of the Fuel Oil Pump Building is part of the assigned duties of the claimant and, due to the door being locked, the claimant was unable to enter the building through the door, and in order to carry out his assigned duty—that of cleaning the building in question—he attempted to force those inside to unlock the door by throwing a stink bomb through the window. Even if the door was locked, which the record does not confirm, but, on the contrary, infers that the door was not locked, we do not think the claimant acted properly. There were other courses he could have pursued, the most logical one being that of notifying his foreman.

The record shows that the claimant was the instigator of the occurrence which resulted in his dismissal.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1953.