

Award No. 1828
Docket No. 1639
2-PRR-URRWA-CIO-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C.I.O.

THE PENNSYLVANIA RAILROAD COMPANY
(Central Region)

EMPLOYEES' STATEMENT OF FACTS: At Pittsburgh, Pa., Pittsburgh Division, Central Region, the Pennsylvania Railroad Company employs a force of coach cleaners.

Cecilia M. Troyan, hereinafter referred to as the claimant, was employed at this point as coach cleaner until December 17, 1951, the date of her dismissal.

The claimant received a letter dated October 15, 1951, instructing her to report for trial on charge of—"Loafing in a lying down position on a pile of empty mail sacks which were on the platform on the north side of No. 4 track in the Post Office at 5:20 A. M. on October 13, 1951. Also your previous unsatisfactory Record" (Underscoring ours)

This trial began October 23, 1951 but was postponed at the insistence of the carrier representative who was conducting the trial.

The trial was resumed November 10, 1951. A verbatim record of this trial was taken, copy of which is submitted herewith and identified as employes Exhibit A.

This dispute was processed on the property of the carrier up to and including the highest officer designated to handle such disputes, as provided for in the controlling agreement.

There is an agreement between the parties hereto, dated July 1, 1949 and subsequent amendments, a copy of which is on file with the Board and is, by reference hereto, made a part of this statement of facts.

POSITION OF EMPLOYEES: It is submitted that within the meaning of the controlling agreement, the carrier stands in violation thereof, pertinent of which is Regulation No. 6, which reads, in part: "Employes shall not be suspended nor dismissed from service without a fair and impartial trial, nor will an unfavorable mark be placed upon their discipline record without written notice thereof." (Underscore is ours.)

"While some of the evidence was circumstantial we think it was sufficient to sustain the charge. It should also be noted that the official who heard the testimony had the witnesses before him and could observe their appearance while testifying, their candor and frankness, or lack thereof. The Claimant has certified that the hearing was fairly conducted, and we find nothing in the record to indicate otherwise. On the showing made we cannot conclude that the Carrier acted arbitrarily or abused the sound discretion which it was required to exercise in a matter of this character."

Your Honorable Board also has recognized the principle that it may not substitute its judgment for that of the carrier in discipline cases where the carrier has not acted arbitrarily, maliciously, or in bad faith.

In this connection, the Board's attention is invited to the following quotation from Award No. 71, Third Division, Referee Paul Samuell:

"So long as the Carrier management acts in good faith and without ulterior motives, and does not abuse the right and privileges of the employees under the contracts and rules and regulations existing between the employer and employee, this Board is without the right to interfere in the action of the employer in disciplining its employees."

A similar principle was set forth in Third Division Award No. 2498, (Sidney St. F. Thaxter):

"It is not the function of this Board to substitute its judgment for that of the Carrier in matters of discipline. Discretion is vested in the Carrier in this respect and a finding will be set aside only when it is so clearly wrong as to constitute an abuse of discretion. Awards 419, 891, 1022, 2297. Not only was there no such abuse of discretion, but the evidence, while conflicting, amply sustains the charge."

There are numerous other awards of the National Railroad Adjustment Board to the same effect.

The carrier submits there is no evidence in the record 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, discipline was imposed upon the claimant only after a proper trial and on the basis of substantial evidence of the claimant's guilt of the offense with which charged. The claimant was afforded all of the rights granted to her by the applicable agreement and has certified that the trial was fairly conducted. Two credible witnesses at her trial gave undisputed substantial testimony which established the claimant's guilt of the offense with which she was charged.

Therefore, the carrier respectfully requests your Honorable Board 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.

Claimant was assigned as a coach cleaner at Pennsylvania Station, Pittsburgh, Pennsylvania, 11:00 P. M. to 7:00 A. M., with a 20-minute lunch period without deduction in pay, with Wednesday and Thursday as rest days. On Fridays and Saturdays she was assigned to work at the Post Office. The remaining three days she worked at Pennsylvania Station. Claimant was charged with loafing in a lying-down position on a pile of empty mail sacks at 5:30 A. M. on October 13, 1951. After a hearing, claimant was found guilty and dismissed from the service.

The evidence may be summarized as follows: Foreman J. V. Crowe and Assistant Foreman A. N. Raymond were on the way to the Post Office to make routine inspections. They observed uncleaned cars in the Post Office and undertook to locate the claimant. Both state that they found her lying down on a pile of empty mail sacks on the platform near the track where she was assigned to work. Foreman Raymond shined his flashlight in her face and called to her twice before he got a response.

Claimant says that she was on her lunch period and that she was sitting on the mail sacks eating a sandwich when Foremen Crowe and Raymond found her.

The record shows that claimant commenced work at or before 11:00 P. M. At 5:20 A. M., she had been on duty for six hours and twenty minutes. The law of Pennsylvania, which was posted on the premises, requires that rest or lunch periods be permitted at or before the performance of five hours of continuous work. Instructions had repeatedly been given that women employees were required to eat lunch in the ladies lunch room although claimant infers that she did not know about it. We point out also that claimant, when found by the foremen, did not tell them she was on her lunch period. If she was on her lunch period, the most natural thing for her to do would be to tell her supervisor that fact. It could have been readily verified at that time. The evidence sustains the carrier's finding that claimant was lounging on the mail sacks as charged. The evidence that she was on her meal period appears to be an afterthought. We cannot say that the carrier acted in an arbitrary manner in so finding.

Claimant complains of the fact that her past record was taken into consideration in assessing the discipline. This question was adequately disposed of by Award 1367.

Claimant had a seniority date of August 25, 1950. At the time of her dismissal from the service she had been employed for about sixteen months. During that period she had been disciplined three times and had a charge of rule violation pending. It is quite evident that this employee did not benefit from the reprimand and two suspensions from service previously assessed. Under such circumstances, particularly where the employee's seniority is of short duration, carrier's action in dismissing claimant from the service cannot be said to be arbitrary or capricious.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1954.