

Award No. 2996

Docket No. 2713

2-L&N-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carman W. L. Bearden was unjustly discharged from service on November 2, 1956.

2. That accordingly the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Carman (Car Inspector) W. L. Bearden hereinafter referred to as the claimant, was first employed by the carrier as carman helper on October 29, 1922; promoted to carman on April 1, 1923, working in this latter capacity until the close of his shift on November 2, 1956.

The claimant received a letter dated September 4, 1956 from assistant superintendent, Mr. W. T. Dudley, wherein he was charged with taking pipe from L&N Railroad property without authority, with leaving his (claimant's) place of assignment without proper authority, with absenting himself from duty without permission before completing his assignment and with falsifying his time report on August 22, 1956. The letter of September 4, 1956 (copy of which is submitted herewith and identified as Exhibit A) further indicated investigation would be held in the office of the assistant superintendent at 8:30 A.M. September 12, 1956.

The investigation was held on the scheduled date and a copy of the transcript is submitted herewith, identified as Exhibit B.

On November 2, 1956 Bulletin No. 75 was placed on the Decoursey, Kentucky bulletin boards and on the same date (November 2, 1956) a letter was

(First Division Award 14552.)

"* * * Our function in cases of the kind here involved, as we understand it, under awards of this Division of the Board so well known and established that they require no citation or further consideration, is not to pass upon the credibility of the witnesses or weigh the evidence but to determine whether the evidence is substantial and supports the charges as made. If it is we can not substitute our judgment for that of the carrier and it is our duty to leave its findings undisturbed unless it is apparent its action is so clearly wrong as to amount to an abuse of discretion."

(Third Division Award 5401.)

"Upon the merits, it should be stated that discipline is ordinarily the prerogative of management and this Division does not pass upon the credibility of witnesses, weigh the evidence, or undertake to resolve conflicting evidence. In that connection, the rule is that we will not disturb disciplinary action if (1) claimant has had a fair and impartial investigation whereat his rights have not been placed in jeopardy, (2) there is substantial credible evidence of guilt, and (3) the penalty invoked is not in the premises excessive."

(First Division Award 16265.)

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.

While there was conflicting testimony adduced at the investigation of the charges against the claimant, there was substantial evidence to reasonably support the decision of the carrier. Under such circumstances we may not substitute our judgment for that of the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1958.