

Award No. 3661
Docket No. 3445
2-B&O-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. — C. I. O. (Electrical Workers)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the Baltimore and Ohio Railroad Company has violated the provisions of the current working agreement between the Carrier and the Shop Crafts organizations, particularly Rule No. 32 when it failed to comply with the provisions of this rule by apprizing Trimmer Operator F. C. Grierson, Curtis Bay, Baltimore, Maryland with a precise charge before summoning him to appear for a hearing, thereby depriving him of sufficient opportunity to call necessary witnesses in his defense.

2. That accordingly, the Baltimore and Ohio Railroad Company be ordered to compensate the widow of F. C. Grierson for all time lost by Mr. Grierson up to the time of his unfortunate death and that she be compensated for vacation accruals earned by Mr. Grierson during the year 1957.

EMPLOYEES STATEMENT OF FACTS: The Baltimore and Ohio Railroad Company (hereinafter called the carrier) employs a force of electrical workers at Curtis Bay Coal and Ore Piers, Baltimore, Maryland, among which are employed coal pier operators who load cargoes on outgoing vessels as well as handle coal for use by numerous industries in and around Baltimore Terminal by means of scows.

On March 1, 1958, at approximately 9:45 A. M., Trimmer Operator Frederick C. Grierson was removed from the service of the carrier and requested to leave the property at Curtis Bay, Baltimore, Maryland, after having been permitted to go to work by his supervising officer.

On Tuesday, March 4, 1958, Mr. Grierson received the following notice from the carriers' trainmaster, Mr. R. S. Densmore:

"You are hereby notified, in accordance with the rules of Wage Agreement under which you are working to report at Curtis Bay Ore Pier Office at 10:00 A. M. on Tuesday, March 6, 1958 for hearing on the following matter:

whatever witnesses he deemed necessary in the defense of his case. He was represented by counsel of his choosing. Both Mr. Grierson and his representatives were permitted to question any or all of the witnesses who appeared in this case.

The investigation was postponed on one occasion at Mr. Grierson's own request. Neither Mr. Grierson nor his representative protested as to any specific impropriety in the conduct of the hearing. He and his representative simply walked out of the hearing room.

In this case Mr. Grierson was granted his full and proper rights and privileges under an application of Rule 32 of the working agreement. There was no impropriety about the investigation procedure; there was no impropriety as to the conduct of the investigation. It is not now subject to challenge.

In a word the carrier submits that the discipline rule in the agreement was properly complied with in Mr. Grierson's case.

CARRIER'S SUMMARY: The evidence of Mr. Grierson's abnormal behavior while on duty on March 1, 1958, goes without dispute. The testimony of those appearing at the hearing goes unchallenged. The specific charge assessed against Mr. Grierson was conclusively proven at the hearing. There is no denial whatever either by Mr. Grierson or by the organization that Mr. Grierson while on duty on March 1, 1958 was under the influence of intoxicants. Such being the case the carrier submits that the proper disciplinary measures were assessed against him. He was dismissed from the carrier's service. The organization's assertion that Mr. Grierson was not given a "precise charge" is not a tenable argument. All parties to this case were fully acquainted with the matters under investigation.

One part of the claim at 2 asks that "* * * (the widow of F. C. Grierson) be compensated for vacation accruals earned by Mr. Grierson during the year 1957." Actually Mr. Grierson's employment relationship with this carrier was terminated prior to the taking of his vacation in 1958. Article 8 of the Vacation Agreement of December 17, 1941 reads "No vacation with pay or payment in lieu thereof will be due an employee whose employment relation with the Carrier is terminated prior to the taking of his vacation, except that employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due." When Mr. Grierson was dismissed from the service of this carrier, his employment relationship was terminated. Under any circumstances no payment is now due his heirs or estate representing any 1958 vacation period.

In this case F. C. Grierson was properly dismissed from the service of this carrier. The wage claim at part 2 is wholly without merit. There has been no violation of any provision of the applicable working agreement.

In all, the carrier submits that the claim in its entirety at both parts 1 and 2 is wholly without merit. The Carrier respectfully requests that this Division so hold and that the claim in its entirety be declined.

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.

Parties to said dispute were given due notice of hearing thereon.

The record discloses that at a reasonable time prior to the hearing F. C. Grierson and the duly authorized committee were sufficiently apprized of the precise charge against him, and that he was afforded ample opportunity to secure the presence of necessary witnesses.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1961.