

Award No. 3676

Docket No. 3446

2-L&N-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

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

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement upgraded Helper (Carman) T. E. Brockman was unjustly dismissed from service on December 1, 1958, and

2. That accordingly the Carrier be ordered to restore the aforementioned upgraded Helper to service with all seniority rights unimpaired and compensated additionally for all time lost subsequent to December 1, 1958.

EMPLOYEES STATEMENT OF FACTS: Upgraded helper T. E. Brockman, hereinafter referred to as the claimant, was first employed by the carrier at their DeCoursey, Kentucky shops on May 27, 1943 and worked in this capacity until promoted to a carman helper on March 8, 1944 and continuing until promoted on December 30, 1955 under the provisions of the June 1, 1953 agreement to perform the duties of a carman, he working in this capacity until his wrongful dismissal on December 1, 1958.

On November 7, 1958, the carrier's master mechanic wrote a letter to the claimant charging him with failing to work his assignment after accepting a call and showing up for work on October 29, 1958, alleging result in delays to switching cars and trains departing from DeCoursey, Kentucky and indicating that an investigation would be held in his office on November 17, 1958.

On November 17, 1958 an investigation of the charges was held as scheduled in the office of the master mechanic.

Under date of December 1, 1958, Discipline Bulletin No. 44 was placed on the bulletin boards at DeCoursey, Kentucky indicating a carman had been dismissed from service for failing to work his assignment after accepting a call and showing up for work, with note thereon that the discipline bulletin was in connection with the investigation of the claimant.

This dispute has been handled with the carrier up to and with the highest officer designated thereby to handle it, and who subsequently declined to adjust the dispute.

and established that they require no citation or further consideration, is not to pass upon the credibility (sic) 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 cannot 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)

"... it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (Second Division Award 1323)

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.

After a hearing claimant was discharged for failing to work his assignment after accepting a call and showing up for work. The claim is that he was unjustly dismissed from service.

Claimant was on a regular assignment as upgraded Carman Helper, but had signed up for overtime work under Rule 12 of the General Agreement, the Interpretation and Application of which read as follows:

"Where employe stands for call on Sunday-holiday or miscellaneous overtime board but is not available, refuses a call, or is assigned or called and fails to report for duty, he will be dropped to the bottom of the board."

The question is whether, on the record, the Carrier properly found that claimant had failed to work his assignment after accepting a call and showing up for work, or whether he had merely refused a call, and thus under the above interpretation and application of Rule 12, should only have been dropped to the bottom of the miscellaneous overtime board.

There is ample evidence to support the carrier's conclusions that claimant had accepted the call and had reported for work, but refused to perform it upon inquiring whether he would receive 8 hours pay and learning that only 7 hours pay would be given him for the remaining 5½ hours of the shift. The circumstances support that evidence, and claimant's testimony to the contrary is in several respects inadequate and inconsistent.

It is well settled that where the record contains substantial evidence in support of the carrier's findings and there is no showing of arbitrary action,

this Board will not weigh the conflicting evidence and substitute its judgment for that of the trier of facts. Award 1809. On the record the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.