

Award No. 3961
Docket No. 4073
2-NYC-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE NEW YORK CENTRAL RAILROAD (Eastern District)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the controlling agreement, Coach Cleaner Mr. Leonard Zablonksi was unjustly dismissed from the service of the Carrier March 31, 1960.

2. That accordingly the Carrier be orderd to restore Leonard Zablonksi to service with all seniority and service rights unimpaired and with compensation for all time lost until he is restored to service.

EMPLOYEES' STATEMENT OF FACTS: On March 26, 1960 Mr. Leonard Zablonksi, found a leather case containing photographic equipment and binoculars in Parlor Car No. 83, in the Passenger Station, Central Terminal, Buffalo, N. Y.

On March 31, 1960 Mr. Leonard Zablonksi on his own free will and without any other persons urging turned the leather case and its contents into the office of the Railroad Police Department at Central Terminal. The railroad police took a statement from Mr. Zablonksi and the General Foreman, Mr. G. Federici removed him from service.

On April 6, 1960 carrier's General Foreman G. M. Federici preferred charges against the Claimant as follows:

"You are hereby charged with leaving the Company property during working hours without permission which is a violation of long established practice and policy of the New York Central Railroad Company.

You are also charged with violation of the long established practice of the Company that any lost articles found in our cars are to be immediately turned over to the Lost and Found Department so the articles can be returned to the owner with the least amount of difficulty."

and scheduled hearing thereon at 9:00 A. M. April 7, 1960. Hearing was held as scheduled.

In view of the fact that it only took 27 days—February 1, 1961, to February 27, 1961—to handle the appeals with the necessary officials below the level of carrier's final appeals officer after it was progressed in accordance with the rule provisions, it is only logical to assume the case could very well have been docketed for discussion at an earlier joint conference, presumably the one held on August 3, 1960.

Carrier has shown in the foregoing cited circumstances that the claim for "compensation for all time lost until he is restored to service" is without merit because of either the dilatory handling by the employes or by their rejection of carrier's offer to reinstate claimant on a leniency basis.

Carrier further contends that there is sufficient evidence in the record to support the charges against the claimant. At the hearing, the claimant admitted he was guilty of the offenses charged. There is no evidence that carrier's action in disciplining the claimant was in any way arbitrary, capricious or in bad faith. On the other hand, the discipline was only imposed upon the claimant after a full and proper trial and on the undisputed evidence and claimant's admission of his guilt of the offenses with which he was charged.

The claim is without merit, and carrier respectfully requests that your Board deny it in its entirety.

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 evidence of record shows the following question directed to claimant at the investigation:

"Q. March 26th between hours of 4 and 12 did you leave the company property without permission?

"A. Yes I did."

In the light of this testimony on the part of the claimant the Division finds there was basis for reasonable discipline. However, in view of the fact that carrier offered to reinstate claimant with seniority unimpaired but without reimbursement for time lost, the Division so awards.

AWARD

Claimant shall be reinstated with seniority and service rights unimpaired but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 9th day of April, 1962.