

Award No. 4069
Docket No. 4017
2-B&OCT-FO-'62

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. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O.
(Firemen and Oilers)

THE BALTIMORE & OHIO CHICAGO TERMINAL
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Laborer Mattie L. Phillips was unjustly dismissed from the service of the carrier, effective March 22, 1960.

2. That accordingly the carrier be ordered to reinstate this employe with all seniority and employe rights unimpaired and with pay for all time lost retroactive to March 22, 1960.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Miss Mattie L. Phillips, entered the service of the Baltimore and Ohio Chicago Terminal Railroad on July 28, 1943, and worked continuously for that carrier until March 4, 1960. On that date she reported for work at 8:00 A. M. and was assigned to clean pits in the diesel house, which duty she performed for three hours and 55 minutes. After lunch on that date, she proceeded to wash diesels, which was her usual custom, until, without any reason, she was instructed to go home at approximately 2:00 P.M. by Master Mechanic C. E. Howdyshell and General Foreman P. R. Lewis.

On March 7, 1960, Miss Phillips was notified to appear for a hearing on March 11, 1960, on the following matter — "Failure to properly perform assigned duties on March 4, 1960." This hearing was conducted by Master Mechanic C. E. Howdyshell.

Then on March 11, 1960, another notice was sent to Miss Phillips requesting that she appear for investigation on the following matter — "Falsifying of Time Card on March 4, 1960." This investigation was conducted by Mr. P. R. Lewis, general foreman, with Mr. C. E. Howdyshell, master mechanic, present.

On March 22, 1960, Miss Phillips received a notice from Master Mechanic C. E. Howdyshell advising that she had been dismissed from the service of the

secure the presence of whatever witnesses she desired. She was represented by counsel of her choosing. Both the petitioner and her representative testified that the hearing had been conducted in a fair and impartial manner and in accordance with the rules of the agreement.

In this case the petitioner was granted her full and proper rights and privileges under an application of the "Discipline and Grievances" rule 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 the petitioner's case.

CARRIER'S SUMMARY:

In this case the petitioner was properly dismissed from the service of this carrier. Her actions while on duty on March 4, 1960 were unconscionable. Her failure to perform her duties properly was compounded by inescapable evidence that she was in an intoxicated condition while on duty; yet the events of March 4 were not isolated ones. Apparently, the petitioner had developed a regular habit of reporting for duty in such a condition. Her actions could not and cannot be condoned. The claim in this case in its entirety is 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.

The parties to said dispute were given due notice of hearing thereon.

While the record shows claimant failed to properly perform assigned duties on March 4, 1960 as charged, after reviewing all the facts and circumstances as shown, the Division is of the opinion that the claimant should be restored to service with seniority unimpaired, but without pay for time lost or other benefits.

AWARD

Claim sustained as per above findings.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September 1962.