

Award No. 4404

Docket No. 4252

2-B&M-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

That on the 14th of August, 1960, the Carrier wrongfully removed Carman Thomas E. Dee from service.

That, accordingly, Carman Dee be compensated for all time and benefits lost during the period starting on the 15th of August and ending on the 27th of August, 1960.

That Carman Dee's record be properly corrected.

EMPLOYEES' STATEMENT OF FACTS: Carman Thomas E. Dee, hereinafter called the claimant, prior to this dispute had been laid off by the Boston and Maine Railroad Company, hereinafter referred to as the carrier.

On August 14, 1960, the claimant was working for the carrier as a relief man under the provisions of article IV of the August 21, 1954 agreement, relieving Carman Lyons.

General Foreman, C. H. Smith, by letter dated August 16, 1960, charged the claimant with " * * * insubordination resulting from your refusal to work on August 15, 1960."

The hearing was held on August 18, 1960 with General Foreman Smith conducting the hearing.

The claimant was removed from service by the carrier and in addition to being denied his service rights August 15, 1960 to August 27, 1960, the claimant was arbitrarily assessed 48 demerits.

The agreement, effective April 1, 1937 as subsequently amended, is controlling.

stantial and satisfactory support, and when that is found our inquiry ends. Awards upon this point are so numerous as to make citation of any of them unnecessary. (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 (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)

Summarizing:

(1) The dispute is moot, because the claimant has voluntarily resigned from service.

(2) The claimant had an obligation to follow orders, and then, if he felt unjustly treated, action through the procedural channels of the contract could have been initiated.

(3) The respondent's action was neither arbitrary nor capricious. Respondent submits there is no basis for claim, and it should be denied.

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 waived right of appearance at hearing thereon.

Claimant was working in relief of another carman on the 4 P. M. to 12 midnight shift of August 14, 1960 and in point of seniority was the youngest man on that shift. Carrier needed an extra man to work in an emergency on the following shift and after asking all men senior to claimant on his shift if they wanted to work, it was necessary to assign the work to claimant. Carman Thomas E. Dee admits that he refused to perform the work requested of him. Carrier immediately suspended the claimant and the next day notified him that a hearing on his "insubordination from your refusal to work" would be held on August 18, 1960. As a result of the hearing claimant was suspended, however a short time later he was reinstated and assessed 48 demerits.

Carman Dee requests that he be compensated for all time and benefits lost during his suspension and that his record be properly corrected.

We do not find any evidence that the Carrier acted in an arbitrary or capricious manner or that it violated the applicable agreement, therefore 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 5th day of February 1964.