

Award No. 4420

Docket No. 4271

2-C&O-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen and Oilers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYEES: 1. Claim of Coal Pier Laborer Alexander Pettaway that he was unjustly dismissed from the service of the carrier, effective January 18, 1961.

2. That accordingly the carrier be ordered to reinstate this employe with all seniority and employe rights unimpaired and pay for all time lost retro-active to January 18, 1961.

EMPLOYEES' STATEMENT OF FACTS: Coal Pier Laborer Alexander Pettaway, hereinafter referred to as the claimant, was employed by the carrier on November 17, 1951, at Newport News, Virginia, and since that time has performed his duties in a satisfactory manner.

Investigation was held on January 16, 1961, on the charge of allowing his wages to be attached by Kramer's Department Store in the amount of \$82.76.

On January 23, 1961, Superintendent C. S. Savage, Newport News, Virginia, advised the claimant that he was dismissed from the service of the carrier for allowing his wages to be attached by Kramer's Department Store in the amount of \$82.76.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that such officers have declined to adjust the dispute.

The agreement effective April 16, 1950, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant is not satisfied with the decision rendered, and accordingly, under rule 19(d) of the agree-

ployes who were dismissed for assigning their wages contrary to the rules of the carrier resulted in sustaining the employes' claim and reinstatement on a technicality—the carrier had not held an investigation.

First Division Award 13604 denied claim of an employe who was dismissed for excessive garnishments. The Board stated that the:

“Claimant took his employment with full knowledge of this rule.”

Award No. 1 of Special Board of Adjustment 194, involved a claim of steno-clerk requesting reinstatement because of dismissal due to excessive garnishments in violation of a rule similar to that of the instant case. Employes' claim was denied. The Board stated:

“By posting the 1952 Bulletin (rule pertaining to dismissal for excessive garnishments), the Carrier put its employes on notice that the type of conduct described in the Rule is grounds for dismissal. Moreover, in this case the dismissal was preceded five months before by a prior charge and warning.”

The duty and right of the carrier of prescribing and enforcing reasonable policies, rules and regulations is well settled. **T&NO Railway Company vs. Brotherhood of Railway Clerks**, 281 U. S. 548; **Link Belt vs. National Labor Relations Board**, 110 Fed 2d 506; and **National Labor Relations Board vs. Jones**, 301 U. S. 1, 57 S.Ct. 615.

The Adjustment Board has frequently endorsed the principle that it should not substitute its judgment for that of management. In long-standing Second Division Award No. 153, Referee Devaney said:

“The control by the employer over the employe is the responsibility of management. This Division should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer.” (Emphasis ours.)

There is perhaps no precept more clearly established by the Adjustment Board than the above principle in discipline cases enunciated time and again by all the divisions. The carrier will not burden the record by repeated citations of the same principle. The carrier therefore submits that the claimants claim is without merit. Further, the carrier is fully supported by the precedent awards. Accordingly, the claim should be denied.

CONCLUSION: The carrier has shown:

1. The Second Division has no jurisdiction to decide this dispute and accordingly the claim should be dismissed without hearing the dispute further.

2. Notwithstanding the lack of jurisdiction of the Second Division to hear this dispute, but expressly not waiving the jurisdiction, the Carrier submits that there is no merit in the claim and accordingly 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.

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

This is an identical situation to that in Award No. 4419, and the same jurisdictional objection is here raised.

That which we said in Award No. 4419 is equally applicable here.

AWARD

Claim dismissed, without prejudice, for want of jurisdiction.

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

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964.