

Award No. 4526

Docket No. 4420

2-KCT-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen and Oilers)**

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, Laborer Boman Rivers was unjustly dismissed from the service of the carrier on June 26, 1962.

2. That accordingly the carrier be ordered to reinstate this employe with all of his seniority and service rights, including all vacation rights and payment of premiums for hospital, surgical and medical benefits including Group Life Insurance, for all time held out of service, and compensation for all time lost, effective with June 26, 1962.

EMPLOYEES STATEMENT OF FACTS: Bomen E. Rivers, hereinafter referred to as the claimant, entered the service of the carrier September 9, 1949, remaining therein until June 26, 1962, the effective date of his dismissal.

On the morning of May 7, 1962, the claimant sustained an injury during his regular tour of duty at approximately 5:25 A. M., necessitating later medical attention and subsequent hospitalization from May 8, 1962 to June 9, 1962.

He continued treatment with his doctor until released for work on June 26, 1962, both by his personal physician, A Dr. Taft, and the carriers' company doctor, Dr. Owens.

The claimant then reported for work on the same date, June 26, 1962, at which time a statement was taken from the claimant by carriers claim agent, W. R. Hovey, account said accident.

On the same date, June 26, 1962, the following letter was addressed to the claimant at his home address over the signature of Mr. W. M. Lehman, master mechanic:

ant's safety record showing seven prior accidents since October 13, 1947, or an average of about one every six months, resulting in five sprains of a hand, a foot, and both ankles, two separate contusions of right knee and right heel, nervousness and shock, and the loss of sixty-one days time. The local chairman objected 'to this man's personal injury safety record being made a part of this trial.'

In view of the claimant's plea of guilty the trial was over, and his prior record was properly considered as bearing upon the discipline to be imposed. This Division finds that his discharge by the carrier was proper and in the interest of claimant, other employees, and the general public, as well as of the carrier."

This claim 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 employees 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.

Upon reviewing the entire record, the Division finds that there is adequate and sufficient evidence to sustain the Carrier's action in discharging the Claimant.

The record is patently clear that the Claimant violated Rule 44 requiring an employe injured while on duty to give his immediate supervisor prompt verbal notice of the injury. The injury was a serious one and the facts show that the Claimant had adequate time to comply with the Rule either before he "clocked out" the day of the injury, or after he was discharged from the hospital but before he reported for duty.

The Division further finds that the Claimant was something less than completely candid and honest in his statements to the questions raised by the Carrier's Claim Agent.

In view of the Claimant's serious transgressions and derelictions of duty and responsibilities, the Division does not believe it necessary to rule on the issue of the propriety of the Carrier's introducing the Claimant's personnel record allegedly to prove his lack of fitness to perform his duties safely. As has already been stated, there is sufficient competent evidence in the record to uphold the discipline imposed upon the Claimant by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1964.