

Award No. 4657

Docket No. 4658

2-LI-CM-'65

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. 156, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

THE LONG ISLAND RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, Joseph Garvey, Coach Cleaner was unjustly dealt with when the Carrier refused to allow him to return to service of the Carrier on November 27, 1963. Carrier held Mr. Garvey out of service without a fair and impartial trial. Finally, on December 17, 1963 a trial was scheduled for Mr. Garvey. On January 28, 1964 Master Mechanic H. J. Kallmann handed down a dismissal notice, which has further served to unjustly deny Mr. Garvey his service rights.

2. That accordingly, the Carrier be ordered to restore the claimant to service with seniority rights unimpaired.

3. Compensate Mr. Garvey for all time lost.

4. Make Mr. Garvey whole for all vacation rights.

5. Pay the premiums (or hospital association dues) for hospital, surgical and medical benefits for all time held out of service.

6. Pay the premiums for Mr. Garvey's Life Insurance for all time Mr. Garvey was held out of service.

EMPLOYEES' STATEMENT OF FACTS: The employe named above in part 1 of the employes' claim hereinafter referred to as the claimant, was employed by the Long Island Railroad Company, hereinafter referred to as the carrier, in the craft of carmen. The claimant was suspended from service beginning November 27, 1963 without proper reason and without first being given a trial.

On December 9, 1963 the carrier charged the claimant with failing to report for duty on July 17, 1963.

The trial was held on January 7, 1964.

The claimant was dismissed from service on January 28, 1964.

In order that your honorable board may be fully aware of the civil charges made against the claimant on June 26, 1963, following is a reproduction of Section 483, Penal Law of New York, of which Mr. Garvey was found guilty on six counts with a sentence of six month incarceration:

"Any person who carnally abuses the body of a child of over the age of ten (10) years and less than sixteen (16) years of age, or who indulges in any indecent or immoral practice with the sexual parts or organs of any such child, in a manner other than by act of sexual intercourse, shall be guilty of a misdemeanor, punishable by five or not more than five hundred (\$500) dollars or imprisonment for not more than one year, and shall be guilty of a felony, punishable with imprisonment for not more than ten (10) years or with imprisonment for an indeterminate term, the minimum of which shall be one day and the maximum of which shall be the duration of his natural life, where such person has been previously convicted either within or without the state, of a similar crime or of the crime of rape in the first degree, rape in the second degree, abduction, sodomy or incest or of the crime of endangering the morals of a child as defined in this section, or of the crime of assault in the second degree with intent to commit the crime of rape, abduction, sodomy, incest or carnal abuse of a child, or where such person has been previously convicted of an attempt to commit any of the aforesaid crimes."

At this point we desire to stress the fact that the claimant had no authority for his absence and, consequently, was in violation of Rule 28. If the carrier was to consider leniency in this case, it would in effect be condoning flagrant violations not only of the existing rules between the parties but also of civil laws.

In conclusion, the carrier desires to reiterate:

1. Claimant failed to comply with the "Ten-day Letter" sent to him by management and also failed to comply with the provisions of Rule 28 of the scheduled agreement.

2. An identical case was decided by your honorable board and rendered by Referee James P. Kiernan in Award No. 2925 wherein he denied the claim of the employees for reinstatement.

For the reasons set forth herein, the employees' claim is without merit and should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, find 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.

Claimant violated Rule 28, which provides that an employe detained from work for any cause must notify his foreman as soon as possible. He stated that

he was in jail and requested his attorney to notify the Carrier of his detention from work, but that the latter failed to do so.

Technically, his attorney's neglect was his own, but Claimant seems not to have intended a violation of the rule and the record indicates that discharge constitutes excessive discipline under the circumstances. The hearing record does not show the cause of his arrest and detention although the Carrier alleges his conviction on a charge which if shown in the record and not successfully refuted would have had some weight. In this state of the record, we believe that a lesser penalty than absolute dismissal is appropriate.

The claim should be denied except for item 2, which asks that Claimant be restored to service with seniority rights unimpaired.

AWARD

I. Items 1, 3, 4, 5 and 6 of the claim denied.

II. Item 2 of the claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 19th day of February, 1965.