

Award No. 4685

Docket No. 4469

2-B&O-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current Agreement, Carmen R. E. Oard, G. W. Snyder and R. E. Covault were unjustly dealt with when removed from service through capricious and discriminatory actions by the Carrier. Carmen R. E. Oard and G. W. Snyder were discharged on December 8, 1961 and Carman R. E. Covault was discharged on December 5, 1961.

(2) That accordingly, the Carrier be ordered to reinstate R. E. Oard, G. W. Snyder and R. E. Covault with all rights unimpaired and that they be compensated for all time lost and made whole for all other rights provided for in the Collective Bargaining Agreement.

EMPLOYEES' STATEMENT OF FACTS: On October 14, 1958, Carmen B. R. Boop and Raymond Musto, employes of the Baltimore and Ohio Railroad Company, hereinafter called the carrier, were injured.

Claim Agent M. D. Brickman held conversations with thirty-five (35) employes working in the Lima, Ohio transportation yards on December 16th and 17th, 1958 and April 3rd and 4th, 1959. These conversations were taken down in shorthand by shorthand stenographer Amelia A. Good. During this time, Mr. Brickman interviewed Carmen R. E. Oard, G. W. Snyder and R. E. Covault, hereinafter referred to as the claimants.

In order to obtain a just settlement for their injuries, Carmen B. R. Boop and R. J. Musto sought legal help. During such legal proceedings, the claimants were summoned by the carrier's attorneys in anticipation of putting them on the witness stand. The carrier's attorneys elected to not use them. Therefore, they never appeared in the court proceedings. On June 23, 1961 judgement was rendered in favor of Carman B. R. Boop. On October 31, 1961, four (4) months after judgement was rendered against the carrier in behalf of Carman B. R. Boop, the claimants were notified to appear at Dayton, Ohio,

and employe. Honesty and a fair regard for truth is an implied provision of every contract of employment.

The contention is also made that the delay of three and one-half months from the time of the trial until the company made the charges vitiates the proceeding. But here the claimant was not under suspension and there is no showing whatever of prejudice. On the other hand, the offense was vicious and the consequences serious. The five-day rule is evidently mostly for the protection of suspended employes."

In Award 18269 (First Division) (Referee Walter R. Johnson) claim was made for the restoration to service of a brakeman dismissed for providing misleading and incorrect information relative to a personal injury. This claim arising on the property of the Pennsylvania Railroad was denied with the following holdings:

"There was ample evidence presented at the trial to support the charge which resulted in the dismissal of the claimant and we are unable to find that the action taken by the carrier was in any way arbitrary, malicious, or in bad faith."

In Award 2653 (First Division) (ORC v. B&O) (Referee Authur M. Millard), request was made for the reinstatement of a conductor dismissed for similar reasons. The claim there was denied.

In Award 692 (Fourth Division) (BRT v. B&OCT) request was made for the restoration to duty with back pay of a Yardmaster dismissed from the service for dishonesty in pursuing a personal injury matter. There the BRT argued "The right and authority of an individual to testify in the Courts of our land is fully set forth in numerous legal decisions, and such rights and privileges are fully protected by law, and the authority granted therein cannot be modified by other agreements. It cannot be properly held that the petitioner should have been denied such right; nevertheless, the facts and circumstances surrounding the instant dispute lead to but one inescapable conclusion — that is, (the Claimant) was dismissed for but one reason, that reason being because he elected to furnish testimony in a Civil Court case pertaining to the injury of an employe which occurred on another railroad. * * *."

The claim in its entirety in Award No. 692 was denied by the Fourth Division of this Board.

In summary the carrier submits that the offense committed by the petitioners in this case was an extremely serious offense. It was a dismissable offense. The proper measure of discipline was assessed against the petitioners.

The carrier submits that the request and claim in this case are totally without merit. The carrier respectfully requests that the request and claim be denied in their entirety.

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 were given due notice of hearing thereon.

The same Parties are involved in this case as in Docket No. 4468. The pleadings and submissions are substantially the same as in Docket 4468; only the Claimants and the hearing and discharge dates are different.

At the Referee Hearing it was stated that "both 4468 and 4469 will be handled simultaneously and the Award in Docket 4468 will be controlling". Consequently, in keeping with our Award No. 4684, we must deny the claim in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4685

Inasmuch as the majority has denied the claim in this case for the same reasons as those set forth in the findings in Award No. 4684 we must likewise dissent for the same reasons given in our dissent to that award.

E. J. McDermott

C. E. Bagwell

T. E. Losey

Robert E. Stenzinger

James B. Zink