

Award No. 4793

Docket No. 4700

2-HBL-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

HARBOR BELT LINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That the service rights of Machinist Michael Goffa (hereinafter referred to as claimant) were unjustly terminated by the Carrier when claimant was dismissed from the service at Carrier's Wilmington Roundhouse without benefit of formal hearing effective January 1, 1964.

2. That accordingly Carrier be ordered to:

- (a) Restore claimant to service with accumulated seniority rights unimpaired.
- (b) Compensate claimant for all time lost.
- (c) Make claimant whole for all vacation rights.
- (d) Pay the premiums (or hospital association dues) for Hospital, Surgical and Medical benefits for all time held out of service.
- (e) Pay the premiums for Group Life Insurance for all time held out of service.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed claimant as a machinist in its mechanical department on October 8, 1938.

On January 1, 1964, the carrier elected to dismiss claimant from the service without according claimant benefit of hearing of any description — not denied by carrier.

The dismissal of this claimant from the service, wholly inconsistent with the terms of the current collective agreement, has been handled up to and

conduct an additional formal investigation before dismissal of the Claimant January 1, 1964 is based upon false premise consisting first, of an unauthorized and illegal abrogation of an existing agreement between the interested parties, and, second, upon an improper and illegal attempt to separate and split a single cause of action.

3. That the provisions of Rules 22 and 23 of the collective agreement were fully complied with in every respect by the Carrier in the single cause of action commencing with formal investigation February 4, 1963 and culminating with permanent dismissal of the Claimant January 1, 1964.
4. That Item 2(b) of the Employees' claim is incompatible and inconsistent with the provisions of Rule 23 of the collective agreement because of the specific terms of the collective agreement and the application thereof by the parties, as well as interpretive application of like or similar rule by Divisions of the National Railroad Adjustment Board.
5. That Items 2(c), (d) and (e) of the Employees' Statement of Claim are ambiguous, uncertain and unintelligible and not based upon any existing rule or rules in effect between the parties.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Rule 23 provides that "no employee shall be disciplined or dismissed without a fair hearing by the proper officer of the Carrier." The Carrier contends that such provision was waived in an agreement on August 26, 1963 to reinstate the claimant on a leniency basis and upon condition that if it was found that Mr. Goffa engaged in the use of intoxicants in the future he would be summarily dismissed from service.

The letter agreement dated August 26, 1963 for the reinstatement of Mr. Goffa did not contain such a waiver among the conditions expressed. Neither is it stated in the Carrier's letter to the General Chairman upon the matter dated August 26, 1963. The Carrier has the burden of proving a waiver of this mandatory rule, and it has not sustained this burden. Even its statement of the alleged agreement, in its submission, does not necessarily establish such a waiver, because the phrase "if it was found that Mr. Goffa engaged in the use of intoxicants" is subject to the inference that there would be a hearing to establish such a finding.

Rule 23 expresses the remedy applicable in such cases. It provides only for reinstatement with seniority rights unimpaired and compensation for net wage loss, if any. Other remedies claimed herein cannot be allowed within the limits of our authority. 7

AWARD

Claim sustained to the extent stated in the findings.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1965.