

Award No. 4874

Docket No. 4820

2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Richard R. Wheeler was unjustly dealt with when he was dismissed from the service of the Chesapeake and Ohio Railway Company on March 5, 1964.

2. That accordingly the Chesapeake and Ohio Railway Company, be ordered to compensate him for all time lost commencing March 6, 1964 eight (8) hours per day, five (5) days per week, plus all overtime accruing to his position also, restore his hospitalization benefits for himself and dependents, his life insurance benefits and vacation rights including the days held out of service to be considered as compensated service for earned vacation, account the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Richard R. Wheeler, hereinafter referred to as the claimant, was regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its yards at Richmond, Indiana as a car inspector with a work week of Monday through Friday, first shift, rest days Saturday and Sunday with local understanding to protect the job on Saturday.

At Richmond, Indiana, cars are inspected and light repairs are made. Under date of January 24, 1964 the Carrier's General Car Foreman, F. H. Porter addressed the following letter to the claimant:

Mr. R. R. Wheeler
Car Inspector
Richmond, Indiana

Peru, Indiana January 24, 1964p/d
File 117-1

Please attend investigation in the Agent's Office at Richmond, Indiana at 11:00 A. M., Tuesday, February 4, 1964.

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.

This grievance arose January 14, 1964. He was furnished an Investigation and Hearing by Carrier, on February 11, 1964. As a result of such Investigation and Hearing Carrier dismissed said claimant from its service on March 5, 1964.

In order to clarify the matter, and by way of explanation, we call attention to Award No. 4873, this Division, that the claimant there is the same as the claimant in the Docket here before us.

From a thorough review of such Dockets, it is noted that claimant here was charged by Carrier on two separate and distinct occurrences on different dates. That after an Investigation and Hearing by Carrier, the charge was made in Award No. 4873 and heard on February 11, 1964. Claimant in Award No. 4873, was discharged from service of the Carrier on March 5, 1964.

As a result of the first Hearing on February 11, 1964, claimant on March 5, 1964, being in a discharged status, then was on the same date, given a Hearing on the Docket here before us.

In view of the record here, we have made a Denial Award in Award No. 4873, and therefore must find in the case here before us, that claimant already having been dismissed from service, does not now hold any status as an employe in view of denial in Award No. 4873.

Since claimant was discharged on March 5, 1964, on the first of two separate charges by Carrier we find that claimant here having no status as an employe, the claim must be considered as moot, and should be dismissed.

AWARD

Claim dismissed in accordance with the foregoing Findings.

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

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 3rd day of May 1966.

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