



Award No. 4985
Docket No. 4924
2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carmen Helpers tentative, Larry G. Harmon, Paul R. Cunningham and Harold F. Spicer were unjustly dealt with when they were suspended from the service of the Chesapeake & Ohio Railway Company, Raceland Car Shops. Harmon and Cunningham from May 28 to June 11, 1964, both dates inclusive. Spicer August 4 to August 18, 1964, both dates inclusive. Eleven working dates each.

2. Accordingly the Carrier be ordered to compensate Carmen Helpers tentative, Larry G. Harmon, Paul R. Cunningham and Harold F. Spicer, 11 days 8 hours each day. Harmon and Cunningham beginning May 28, 1964, and Spicer beginning August 4, 1964, at the Carmen's applicable straight time rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Carmen Helpers tentative Larry G. Harmon, Paul R. Cunningham and Harold F. Spicer, hereinafter referred to as the claimants were regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, in its Raceland Car Shops on the 3rd shift as carmen helpers tentative, with a work week Monday through Friday, rest days Saturday and Sunday.

The Raceland Car Shops is a car building shop and operated on a pre-determined quota basis, a specified number of new cars and/or rebuilt cars are produced each day. Under date of April 27, 1964 the carrier's shop superintendent addressed the following letter to the claimants:

"Russell, Kentucky
April 27, 1964t
B-117-2-C
117-2-H
117-2-S

Carrier was fully justified in disciplining the offenders by suspending them from service for 15 calendar days.

The 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 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.

Claimants are three carmen helpers, each with over two years service, who were suspended for fifteen days for falsifying time cards and absenting themselves from duty on the third shift, April 23, 1964.

The charge of falsification has not been established by the evidence and there is no proof whatever that Claimants intended to defraud Carrier or engage in the grave misconduct charged on the first count.

That Claimants left their area of duty and went to the commissary without permission during working hours is clear, however, and not disputed. Claimants Cunningham and Spicer concede going there, for coffee in the former's case and breakfast in the latter's case. Claimant Harmon admitted spending a few minutes at the commissary to pick up a box of aspirin.

Carrier is entitled to a fair day's work and there is no justification for employes taking matters into their own hands and leaving their work area without permission. There is no evidence that Claimants were singled out for discriminatory treatment and management has every right to enforce the requirement to stay on the job unless excused.

It is a matter of some concern to us that Carrier's hearing officer cut off a line of questioning by Claimants' representative during the hearing, although it may well have been material and was not repetitious, unduly time consuming or burdensome. Carrier has been given considerable latitude in discipline cases and should make certain that any employe under charges has full opportunity to present his case. Here, the error is not prejudicial since the critical facts adverse to Claimants have been admitted by them. In other instances, however, where conflicting testimony is involved, it could provide a basis for setting aside discipline.

Since the more serious charge has been dismissed and Carrier based the discipline on findings that both charges were established, it is quite apparent that suspensions of fifteen days are no longer appropriate. Accordingly, the suspension of Cunningham and Spicer will be reduced from fifteen calendar days to seven calendar days while that of Harmon, who unlike the other Claimants was already returning to work when intercepted by the foreman, will be reduced to five calendar days. In all other respects, the suspensions are affirmed.

AWARD

Claim disposed of to the extent indicated in the Findings.

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

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

Dated at Chicago, Illinois, this 18th day of November, 1966.