Award No. 5161
Docket No. 4899
2-C&NW-MA-'67

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.**

---

## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

## CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago & North Western Railway Company violated the collective agreement and unjustly treated Machinist R. J. Brackemyer when it suspended him from service on Sept. 22, 1964, and discharged him from service on Oct. 1, 1964.

2. That accordingly, the Chicago & North Western Railway Company be ordered to reinstate this employe with seniority rights unimpaired and compensate him at Machinist pro rata rate plus six percent (6%) interest for all wage earnings deprived of; also fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since Sept. 22, 1964, until restored to service.

EMPLOYES' STATEMENT OF FACTS: Mr. R. J. Brackemyer hereinafter referred to as the claimant was employed as a Machinist by the Chicago & North Western Railway Company, hereinafter referred to as the carrier, at Clinton, Iowa.

The Car Shops Superintendent Mr. R. E. Powers suspended the claimant from service at the close of his shift on August 31, 1964. On September 1, 1964, Car Shops Superintendent R. E. Powers charged the claimant as follows:

"CHARGE: Your responsibility for absenting yourself from your assignment from approximately 8 P. M. to conclusion of your assignment at 12 Midnight on September 21, 1964."

The investigation was held as scheduled on September 29, 1964. Supt. R. E. Powers appeared as the interrogating officer. On October 1, 1964, Car Shops Superintendent R. E. Powers dismissed the Claimant and wrote him as follows:

"Your responsibility for absenting yourself from your assignment from approximately 8 P. M. to conclusion of your assignment at 12 Midnight on September 21, 1964."

safe operation. It is for these reasons that this Board would hesitate to interfere with the action of the carrier in cases such as we have before us. It is quite evident that these claimants improperly assumed that they would not be needed until Train 211 arrived at 6:15 P. M. The assumption was not justified with the result that carrier was forced to call on others to do their work. Carrier clearly had the right to enforce its instructions and compel obedience to its orders which were definite and positive. To hold otherwise would unduly restrict the right of management to efficiently operate its railroad. Claimants were given a hearing at which they had full opportunity to be heard and to produce witnesses. The action of the carrier appears to have been motivated by necessity and not by action that could be deemed arbitrary or capricious. We can find no reason for interfering with the action of the carrier."

There is no support for the claim for reinstatement and pay for time lost. The "statement of claim," in addition to reinstatement with pay for time lost, also requests payment of six percent (6%) interest for all wage earnings deprived of; also fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since September 22, 1964 until restored to service."

It will be noted that rule 35, quoted above, refers to pay for time lost, but makes no reference to fringe benefits claimed in this case. Under this rule the claimant would be entitled only to time lost less earnings in outside employment (see Second Division Award No. 1638 involving the same rule and the same parties), if he were entitled to reinstatement, which he is not. It will be noted that the rule makes no provision for payment of six percent interest or the fringe benefits referred to in the "statement of claim." In this respect, the claim in this case constitutes in part a request for a new rule, which is beyond the jurisdiction of this Board. The Board's authority is limited to interpretation of existing rules, and does not extend to promulgating new rules under the guise of interpretation of existing rules. See Second Division Award No. 3883.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

The Claimant worked on the second shift of an assembly line. He did not return to his shift after attending a union meeting from 8:00 P. M. to 9:00 P. M. His shift lasted until midnight.

The rest of the employes that attended the said union meeting did return to their job after the meeting.

AWARD

Claim of Employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.

## LABOR MEMBERS' DISSENT TO AWARD 5161

The Referee and Carrier members which constituted the majority in this Award (5161) erred in their findings when they stated:

> "The claimant worked on the second shift of an assembly line. He did not return to his shift after attending a union meeting from 8:00 P. M. to 9:00 P. M. His shift lasted until midnight.
>
> The rest of the employes that attended said union meeting did return to their job after the meeting."

Such casual inattention to the actual dispute of claim, controlling agreement rules and record as a whole before this Division, does violence to the legislative intent of the Railway Labor Act, 3 first(i). Most certainly, it rendered an injustice to the claimant, which he expected to receive under the due processes of the collective bargaining agreement and the Act itself.

The actual dispute before this Division was:

> 1. The Chicago & North Western Railway Company violated the collective agreement and unjustly treated Machinist R. J. Brackemyer when it suspended him from service on September 22, 1964, and discharged him from service on October 1, 1964.
>
> 2. The remedial action sought under the dispute and agreement was that accordingly the Chicago & North Western Railway Company be ordered to reinstate this employe with seniority rights unimpaired and compensate him at Machinist pro-rata rate, plus 6% interest for all wage earnings deprived of; also fringe benefits (Vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since September 22, 1964, until restored to service.

It is clear in the Award of the majority that they failed to take cognizance of the controlling rules of the Shop Craft Agreement and the record as a whole. In fact, they failed to treat with the specific dispute at all. The record

reflects that the original charge placed by the Carrier against the claimant in this instant dispute read:

September 24, 1964

Mr. Robert J. Brackemyer
2210 North 7th Street
Clinton, Iowa

Please arrange to appear for investigation as indicated below:

Time: 10:00 A. M.

Office: Superintendent of Car Shop, Clinton, Iowa

Date: September 29, 1964

CHARGE: Your responsibility for absenting yourself from your assignment from approximately 8:00 P. M. to conclusion of your assignment at 12:00 midnight on September 21, 1964.

The charge itself did not make Machinist Brackemyer's actions contingent upon other employes who may have also gone to the Machinist local lodge meeting. Therefore, reference to other employes and their actions by the majority is not proper and has no meaning or substance in the conclusion of facts of these findings.

The record reveals that the claimant was a local Shop Committee Chairman and Vice President of the local lodge. On these very undisputed facts, the claimant is set apart from other employes of the craft at his point of employment; because he was elected by the others belonging to the union to represent them under the provisions of the Railway Labor Act and the controlling shop craft agreement Rule 36.

"RULE 36.

EMPLOYES' REPRESENTATIVES

The Railway Company will not discriminate against any Committeeman who from time to time represent other employes . . ."

This rule speaks for itself relative to the claimant's rights as a Committeeman. There is no question but that he was representing other employes at his local union meeting. Such representation includes on and off the Carrier property.

Further, the record reveals that the claimant was also Vice President of this local lodge. This necessitated him to be present during the entire course of business of his union. The transcript of the investigation, as well as the record as a whole, is replete with statements that the claimant had permission from his foreman to check out; and his reason was to go to union meeting. Therefore, the claimant received permission to leave the Carrier's property, was not under pay or salary from the Carrier, and committed no violation of any rules.

It is well established in the field of labor relations that the Carrier in this instant case had the burden to prove their charge against this Shop Com-

mitteeman. This is sound doctrine in disciplinary matters; it is essential that employes be protected against abuse of discretion in Management judgment. It follows that this principle of fair play and justice should also be true and expected from the highest tribunal established by Congress to hear minor disputes such as we have in this instant case.

The claimant was denied all of these principles when the majority upheld the Carrier's most extreme penalty that an employe could receive from the hands of an employer: "COMPLETE DISCHARGE."

We are compelled to dissent.

**R. E. Stenzinger**
**E. J. McDermott**
**C. E. Bagwell**
**O. L. Wertz**
**D. S. Anderson**

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.