



Award No. 5512

Docket No. 5437

2-CB&Q-FO-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the Current Agreement Hostler Helper J. G. Talbott was unjustly dealt with when dismissed from service at about 3:40 P. M., November 17, 1965.

2. That accordingly Carrier be ordered to restore the aforementioned Hostler Helper to service with seniority unimpaired, compensated for loss of pay and all benefits intact.

EMPLOYEES' STATEMENT OF FACTS: Hostler Helper J. G. Talbott, hereinafter referred to as the Claimant was employed by the Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as the Carrier, as such at Council Bluffs, Iowa, with a work week of Monday through Friday, 8:00 A. M. to 4:00 P. M., Saturday and Sundays as rest days.

Claimant was dismissed from service at about 3:40 P. M., November 17, 1965 and pursuant to request in behalf of claimant as required by Rule 24 of the current agreement, a hearing was held at 10:00 A. M., December 28, 1965, a copy of the hearing transcript is attached and identified as Exhibit A.

Under date of January 13, 1966, Claimant appealed his dismissal to George Kreigler, Jr., claiming reinstatement with no loss of seniority and pay as well as all benefits being intact, a copy of which is attached as Exhibit B.

In letter dated January 18, 1966 Car Foreman G. Kreigler, Jr. replied to the Claimant in which he failed to give a decision on the appeal of the Claimant, a copy of which is attached as Exhibit C.

Exhibits D, E, F, G, H, I, J, K, L, and M, attached reflect the handling of the case on the property.

Claimant was charged with being asleep while on duty. There was substantial credible evidence supporting the Carrier's decision that he was guilty of the charge.

Sleeping while on duty is generally regarded as an offense which justifies discharge and, since the claimant had only about three years service with the Carrier, the penalty of discharge cannot be considered excessive."

In conclusion the Carrier sums up his position in this case as follows:

1. The claim of Mr. Talbott was disallowed by the Foreman when the transcript of investigation was sent to him on January 18, 1966 (Carrier's Exhibit No. 3).
2. This disallowance was not rejected by the Claimant, nor was his claim appealed within sixty days of that disallowance. If any time limit defect exists, it is on the part of Claimant and his representative.
3. This claim was settled on the property in conference on March 23, 1966 between General Chairman Wells and Chief Mechanical Officer R. E. Taylor. The Board should uphold that disposition of the case.
4. The claim for reinstatement to the former position held by Mr. Talbott is moot since there are no jobs represented by the IBF&O now in existence at Council Bluffs, his only seniority point.
5. The monetary claim made on his behalf cannot extend beyond sixty days from his dismissal, or January 16, 1966, or at the most beyond April 7, 1966 when the claim was declined by Master Mechanic Poindexter.
6. There is absolutely no merit to this claim, since Mr. Talbott admitted he had been sleeping on duty and this is a dismissal offense.

By reason of the above and foregoing, the Carrier submits this claim 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 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 were given due notice of hearing thereon.

Claimant was dismissed from service on November 17, 1965. Thereafter, an investigation was held on November 28, 1965 to consider the specific charges against Claimant in accordance with the current Agreement. In addition to contending that the evidence does not justify the assessment of the ultimate penalty against Claimant, Petitioner urges that the penalty should be revoked because Carrier violated Article V(a) of the effective Agreement since Carrier failed to deny the claim within the prescribed 60 day period.

The record reveals that Claimant addressed the following letter to Carrier dated January 13, 1966:

"In view of the fact that neither myself or my Union Representative, Clair Clark of Pacific Junction, Iowa, have received notification of the disposition made of the investigation of my being dismissed from service for the Burlington Railroad, and neither have we, Clair Clark or myself, received a transcript of the investigation; I hereby request reinstatement to my job as Hostler Helper, with no loss of pay, seniority non-impaired and all benefits intact. Reply is requested immediately."

Carrier's response is contained in a letter to Claimant from Car Foreman G. Kreigler, Jr., which reads as follows:

"Referring to your letter of January 13th, regarding investigation conducted at Council Bluffs, Iowa on December 28, 1965, relative to your dismissal from the services of the CB&Q Railroad.

Neither you or Mr. A. C. Clark made request for copy of transcript of testimony taken at the above investigation, however, presume it is the intent of your letter of January 13th that you be furnished copy, therefore, am sending copy herewith."

Subsequent efforts to settle the dispute on the property were unsuccessful and the dispute is properly before this Division for consideration.

Article V(a) of the effective Agreement provides as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contention of the Carrier as to other similar claims or grievances."

Claimant's letter of January 13, 1966 constitutes a bonafide claim for reinstatement without loss of pay and with seniority as well as all other rights unimpaired. Carrier's reply to Claimant's letter was not responsive to either final disposition of his case following the investigation or disposition of the claim contained in said letter. Furthermore, there was no settlement agree-

ment entered into by the parties during the conference on March 23, 1966 as the proposed compromise was subject to Claimant's approval. Consequently, the original claim was neither settled nor withdrawn, and the time limitations found in Article V(a) of the effective Agreement are applicable. The pertinent language in Article V(a) is clear and unequivocal in the event of failure to notify a Claimant that a particular claim or grievance is denied. Award 3312. Accordingly, we have no alternative but to sustain the instant claim.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1968.