



Award No. 5567

Docket No. 5442

2-LV-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the controlling Agreement when it unjustly dealt with Carman Alvaro G. Ciardi, Manchester, N. Y. Car Department, when he was given two (2) days actual suspension October 28 and 29, 1965.

2. That accordingly, the Carrier be ordered to compensate Carman Alvaro G. Ciardi for the wage loss suffered for sixteen (16) hours at the straight time rate of pay for said violation, and that his service record be cleared accordingly.

EMPLOYEES' STATEMENT OF FACTS: Carman Alvaro G. Ciardi, hereinafter referred to as the Claimant, entered the service of the Lehigh Valley Railroad Company, hereinafter referred to as the Carrier, in 1944. On September 12, 1965 he held regular assignment as a car inspector at Carrier's Manchester, N. Y. Yard, with work week of Thursday through Monday, with assigned hours of 11:00 P. M. to 7:00 A. M.

Under date of September 14, 1965, Claimant received the following Notification Letter from Master Mechanic, G. P. Barth:

"In accordance with Rule 37 of the current Agreement between System Federation No. 96 and the Lehigh Valley Railroad, you are hereby notified to report for a hearing and investigation in connection with assaulting Carman C. A. Brown, while performing duties in Manchester, N. Y. Yard on Train COJ-32 at 2:30 A. M., September 12, 1965, resulting in abrasions and contusions to right side of Brown's head and face, to determine your responsibility, if any, in this matter. The hearing and investigation will be held at Manchester, N. Y., September 21, 1965, 10:30 A. M., EDT, in the office of R. F. Rymell, General Foreman at Enginehouse.

meted out to claimant's co-worker. Consideration of both hearings and investigations of claimant and his co-worker prove discipline to both was warranted.

Carrier submits its right and responsibility to give discipline should be sustained in this case and Organization's position be declared void of basis.

(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 transcript of the investigation in this case is entirely devoid of probative evidence. The victim of the alleged assault first testified that he saw "a hand coming down on me" and, subsequently, at the same investigation, was asked:

"Q. Then you do not know in what manner you were struck?"

In response, he answered, "No."

The letter dated October 12, 1965, addressed to the victim, Charles A. Brown, by C. C. Treese, Superintendent-Car Equipment stated that:

"This investigation developed that you were provocative in this incident; therefore, you are hereby being assessed two (2) days' actual suspension."

The record as to provocation is meaningless; Ciardi alleges he was cursed by Brown; Brown testified he did not curse Ciardi; Bromley, who was present when the alleged altercation took place and might have been helpful, did not testify.

Under the circumstances, we must hold that the charges against Ciardi were not proved even prima facie.

AWARD

Claim sustained.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1968.

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