

Award No. 5611

Docket No. 5474

2-C&O-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. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

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

DISPUTE: CLAIM OF EMPLOYEES:

1. Committeeman of Carmen at Elk, West Virginia, Gordon R. LeGrand's service rights and rules of the controlling agreement were violated and LeGrand was discriminated against as Committeeman as result of investigation held at Elk, West Virginia on Wednesday, August 17, 1966.

2. That accordingly the Chesapeake and Ohio Railway Company be ordered to restore Mr. LeGrand to service with seniority rights unimpaired, compensated for all time lost and all benefits accrued had he not been dismissed from service.

EMPLOYEES' STATEMENT OF FACTS: Gordon L. LeGrand (also Local Committeeman) 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 Elk, West Virginia on second shift, where Carrier owns and operates a facility consisting of shop track, passenger station and transportation yards, where cars are inspected, switched, repaired and cars are interchanged from other roads to the C&O lines 24 hours a day, 7 days per week. The Claimant was charged with conduct unbecoming an employe of this Company by reason of having inflicted bodily injury on the person of Carman Denver G. Potter, which occurred in or near the Carmen's locker room at Elk, West Virginia at approximately 11:00 P. M., Saturday, August 6, 1966, while on duty and under pay and was notified to attend investigation scheduled for 1:30 P. M., Wednesday, August 17, 1966 and to arrange for representatives and necessary witnesses if desired. Investigation was held as scheduled and copy of the transcript is attached hereto as Exhibit A.

Under date of August 25, 1966 the following letter was addressed to Claimant:

It is well known in matters of discipline that the conduct of employees following dismissal is sometimes observed to see if restoration to service on a leniency basis is justified. No particular effort was made to observe LeGrand's conduct after his dismissal; however, his behavior was such that it could not be ignored. Attached as Carrier's Exhibit B is copy of letter to the General Chairman dated January 31, 1967, with which the Carrier furnished notarized statements attesting to LeGrand's conduct before and after dismissal. Carrier's Exhibit C is notarized statement of Earl E. Skinner attesting to the fact that LeGrand struck Skinner on August 27, 1966, blaming him for getting him (LeGrand) "fired." Carrier's Exhibit D is notarized statement of Charles C. Peters and Earl E. Skinner dated August 23, 1966, in which they describe an incident when LeGrand slapped a clerk in a restaurant. Carrier's Exhibit E is statement of Charles C. Peters describing LeGrand's attempt to provoke a fight after a previous investigation in which LeGrand was disciplined.

This is Gordon LeGrand. This is the man who testified as to how he tried to protect Denver Potter who had allegedly reported for duty in an intoxicated condition. Certainly these statements do not add credence to LeGrand's attempt to show such an altruistic interest in his fellow employee. Also significant is statement of Charles C. Peters and C. V. Hendricks (Carrier's Exhibit F) showing that the doctor who treated Potter following LeGrand's assault found that Potter was not intoxicated. This shows conclusively that LeGrand had attempted to justify his actions by falsely accusing Potter of being intoxicated.

The manner in which the claim* is framed shows an attempt by the Employees to build a case without having the material to do so. The claim states that **Committeeman** Gordon R. LeGrand's service rights and rules of the controlling agreement were violated, yet there has never been one reference to any rule or provision of the collective bargaining agreement which, allegedly, was violated. It is understandable that nothing has been pointed out because the Carrier fully complied with all procedural and substantive rules relating to discipline matters. The claim also states that **Committeeman** LeGrand was discriminated against as a **committeeman**. This is extremely far fetched. Under the Railway Labor Act the carrier has no voice as to who is or is not a committeeman, and the fact that LeGrand was local Chairman at the time of his dismissal is of no significance whatsoever. Insofar as the Carrier was concerned, LeGrand could have remained as local chairman; however, because he was local chairman did not give him the right to assault his fellow employee. This accusation by the Employees has not been supported with the slightest bit of evidence.

It cannot be shown that the Carrier acted arbitrarily or capriciously. LeGrand was found guilty of an extremely serious offense. His dismissal from service was fully justified.

All data herein submitted in support of Carrier's position has been presented to the Employees or duly authorized representatives thereof and made a part of the question in dispute.

(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 were given due notice of hearing thereon.

A review of the transcript of the investigation as well as the argument and discussion of the case as stated by the parties in their respective submissions and at the hearing leads this Board to the conclusion that the serious charge against the claimant was proven and that there exists no basis for disturbing the discharge in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1968.