

Award No. 5692
Docket No. 5542
2 PC (NYC) F&O '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O.
(FIREMEN & OILERS)

PENN CENTRAL COMPANY
(formerly New York Central Railroad Company, Northern District)

DISPUTE: CLAIM OF EMPLOYEES: That the carrier violated the provisions of Rule #24 of the current agreement when they unjustly dealt with and arbitrarily removed Classified Laborer Felix Coppins from the service of the carrier for alleged misuse of credit card;

That Classified Laborer Felix Coppins be compensated for all wage loss since August 22, 1966, and be returned to the service of the carrier with seniority, vacation, health and welfare, and life insurance rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Laborer Felix Coppins (hereinafter referred to as the claimant) was employed by the New York Central Railroad (hereinafter referred to as the carrier) as such on August 21, 1966, having six years of service without a blemish on his record.

In a letter dated August 22, 1966, General Enginehouse Foreman N. A. Oley advised the claimant to appear for a hearing at 1:30 P.M., August 30, 1966, on charges set forth therein, which is confirmed by Exhibit A attached. Further, on this day, the claimant was also removed from the service of the carrier. Hearing was held on August 30, 1966, copy of which is attached as Exhibit B. In a letter dated September 7, 1966, N. A. Oley advised the claimant he was dismissed from the service, which is confirmed by letter attached hereto as Exhibit C.

This dispute was handled with the carrier officials designated to handle same, who all declined to adjust the matter. The agreement effective August 15, 1952, as subsequently amended, is controlling.

EMPLOYEES' POSITION: It is submitted that the claimant was unjustly dealt with and, accordingly, the case was handled under Rule #24 of the current agreement seeking settlement or eventually having the case adjudicated under the provisions of the Railway Labor Act, as amended.

be sustained, except that we make no finding in reference to insurance premiums for Hospitalization and Life Insurance. We can find no requirement in the Agreement between parties which makes any reference to payment of premiums by Carrier. Such claim for insurance premiums is not a wage loss as described in Rule 31 of the Agreement."

In Second Division Award No. 4793 (Referee D. E. Whitney) it was held in respect to Health and Welfare, as follows:

"Rule 23 expresses the remedy in such cases. It provides only for reinstatement with seniority rights unimpaired and compensation for net wage loss, if any. Other remedies claimed herein cannot be allowed within the limits of our authority."

In Second Division Award No. 5223 (Referee Harold M. Weston) it was held in respect to Health and Welfare and benefits, specifically, the request for Life Insurance payment to Claimant's widow, as follows:

"In view of Awards 3883, 4532, and 4866 we will not require Carrier to pay the premiums for Health and Welfare, life insurance and other items mentioned in Part 2 (b) of the claim."

The language of Rule 24 with respect to "wage loss" has been in effect since 1929. The "Health and Welfare" program became effective in 1954 and specifically was in addition to wage adjustments. Therefore, since the circumstances of the instant dispute in respect to the Health and Welfare program are like those of the disputes decided by the aforementioned awards, Carrier submits the Board accordingly should deny any claim for Health and Welfare benefits claimed.

CONCLUSION: The Carrier submits, in conclusion that the hearing held was fair and impartial; that the record reveals evidence more than adequate to support the finding of guilt; and that the measure of discipline was reasonable under the circumstances. Carrier did not violate Rule 24, nor were its actions unwarranted, unjust, arbitrary, or an abuse of discretion as contended in the Employees' Statement of Claim. 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 were given due notice of hearing thereon.

This is a discipline case. Claimant, Felix Coppins, was employed and classified as laborer or tractor operator when suspended on August 22, 1966; and, thereafter was dismissed from Carrier's service on September 7, 1966, pursuant to the terms and conditions of Rule 24 of the collective bargaining agreement, by and between the parties to this dispute. He com-

plains that he was "unjustly dealt with," within the meaning of that Rule.

The duly authorized local committee, or its accredited representative, progressed his grievance on the property for purposes of contending that Rule 24 was violated in his case. The highest designated railroad official, or his duly authorized representative, and the duly authorized representative of the employee, failed to agree on a settlement, and the case was progressed to this Board "in accordance with the Railway Labor Act."

Claimant's suspension on August 22 was invoked pending a hearing by a designated officer of the Carrier. The hearing was held on August 30, 1966. General Foreman Norman A. Oley was the officer who was designated to hold the hearing. A stenographic report of the investigation was taken at the hearing and the duly authorized committee was furnished a copy of the transcript.

The transcript is a matter of record before the Board and has been duly examined to determine the question of whether or not the claimant was "disciplined without a fair hearing." Only the transcript, rules of agreement, and argument have been entertained and considered by this Board.

Claimant, 47 years of age at the time of the hearing, had accumulated six (6) years' seniority with Carrier. He was assigned 11:00 P.M. to 7:00 A.M. Sunday through Thursday, rest days Friday and Saturday, to drive and service re-fueling truck No. 6810 while in his charge, in connection with his duties that involved checking oil, fueling and sanding diesels, when this dispute arose.

On August 22, 1966 he was notified:

"This is to notify you there will be an investigation held in my office at 1:30 P.M. August 30, 1966 to place responsibility for the mishandling of Credit Card assigned to the fuel trucks for fueling diesel locomotives.

"Any witnesses or representation you desire should be present at this time." ¹

The August 30 hearing constituted a "prompt" hearing following Claimant's suspension on August 22, and afforded a reasonable opportunity to assure the presence of necessary witnesses. The notice did not apprise Claimant of the precise charge or charges, however, nor is notice to the duly authorized committee a matter of record.

Claimant appeared at the aforementioned time and place, accompanied by Local Chairman H. Dorsey. Claimant brought no witnesses nor did any appear for him.

The Local Chairman interposed an objection as follows:

"HD Before this investigation goes any farther I would like to go on record. Under Rule 24 of the Firemen & Oilers agreement no employee is supposed to be disciplined against without a fair hearing. Mr. Coppins was pulled out of service without

¹ Transcript, page 1;

a fair hearing, and I recommend that if this man is innocent that he will be restored to the seniority roster with seniority unimpaired and compensated for all time lost." ²

Claimant thereafter announced that he was ready to proceed and acknowledged that he had received notice to appear. The hearing, it develops, was called to investigate, determine the facts, and place responsibility, if warranted, for Claimant having mishandled the Carrier's Credit Card which had been issued to him as a driver of diesel fueling trucks.

The investigation concerns a report by security officers who had Claimant under surveillance on instructions from Carrier when he appeared at a local service station shortly after going on duty the nights of August 16 and 21 and used the Credit Card issued to him by Carrier to charge 30 gallons of gasoline to Carrier's account on both dates "and some other item for \$1.40" ³ on August 16.

Claimant gave his account of the transactions on August 16 and 21 under questioning by General Foreman Oley. The Local Chairman was invited to interrogate Claimant but waived the opportunity to do so. Only one of the two officer who observed the transaction on August 16 appeared at the investigation and gave his account, under questioning by General Foreman Oley and the Local Chairman concerning what he had observed that date. The Local Chairman protested Carrier's failure to have the other officer present. The two officers who were at the service station on August 21 appeared and were interrogated. No other witnesses are on record.

The investigation was closed after General Foreman Oley had invited further questions or statements in conclusion. Claimant charged that the statements made against him were false. The Local Chairman observed that in his "estimation these charges have not been proven to the satisfaction of the organization that I represent, and therefore I am asking that this employee be reinstated to the seniority roster with seniority unimpaired and compensated for all the time lost pending this investigation, which to my estimation, was a violation of the Firemens and Oilers Agreement by removing this man from service without a fair hearing." ⁴

Claimant and the Local Chairman were otherwise satisfied with General Foreman Oley's handling of the investigation.

According to three of the four security officers, the Credit Card issued to Claimant by Carrier was mishandled by him to charge 15 gallons of gasoline on each of the dates in question in excess of the 15 gallons actually pumped and delivered to the re-fueling truck on said dates. On neither date, while Claimant was under surveillance, did any one of the officers have occasion to see motor oil added in explanation for the charge of \$1.40 as an additional item.

Claimant explains that it was his practice as a patron of this particular station, to handle the pumps himself when the station attendant is busy, make out his own charge ticket on a self-service basis, or verify

² Transcript, page 1;

³ Transcript, page 15;

⁴ Transcript, page 16.

same before signing, as he says he did on each of the dates in question. He further explains that he customarily pumps 15 gallons of gas, sets the meter back and pumps 15 gallons more because he had found at one time during the winter months, while the regular station attendant was off sick, that a price discrepancy in the meter reading had resulted when the inexperienced attendant had pumped 30 gallons without turning the meter back. Accordingly, he says that he had inaugurated the practice of pumping 15 gallons twice and then doubling the amount in dollars and cents registered on the meter in order to arrive at the total amount due.

The security officers discount Claimant's explanation in terms of actual time consumed to service the truck and what they say was witnessed by them with their own eyes. The case made by them would be stronger on the disputed facts, except for a missing link in the chain of circumstances for proving collusion between Claimant and the station attendant. There is not one iota of proof in the record to show that Claimant misappropriated Carrier's Credit Card to his own advantage, use, benefit, or gain, an inference which others could draw from this record, to his possible detriment or injury if Claimant's explanation is totally discredited by this Board, and the measure of discipline meted out by Carrier is sustained.

Suspension was proper in this case pending a hearing, but the Board finds, on the basis of the entire record, that Claimant was dismissed from Carrier's service without the benefit of "a fair hearing" as prescribed in the full context of Rule 24(f).

A W A R D

1. Carrier violated the provisions of Rule #24 of the current agreement when it unjustly dealt with and arbitrarily removed Classified Laborer Felix Coppins from its service for alleged misuse of Credit Card;

2. That Classified Laborer Felix Coppins be compensated for all wage loss since August 30, 1966, subject to deduction of all outside earnings; and, that he be fully restored to Carrier's service effective with the date first held out of service, without impairment of his seniority or any of the rights, privileges and benefits thereunto attaching.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1969.