Award No. 5747
Docket No. 5656
2-C&O-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES' DEPARTMENT, AFL - CIO (CARMEN)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (SOUTHERN REGION)

DISPUTE: CLAIM OF EMPLOYES:

1. That carman-tentative, M. D. Castle was unjustly dismissed from the service as result of investigation held in General Car Foreman's office, Walbridge, Ohio, 11:00 A.M., August 10, 1967, the charges were not true and Mr. Castle was discriminated against.

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

EMPLOYES' STATEMENT OF FACTS: Carman-tentative, M. D. Castle, hereinafter referred to as the claimant was regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier on the shop track, second shift where carrier owns and operates a large facility consisting of shop track, transportation yards and dock operations where cars are inspected, switched, repaired and cars are interchange from other roads to the C&O lines 24 hours each day, 7 days per week.

Claimant was charged with insubordination when failing to carry out instructions given him by his supervisor at approximately 6:50 P.M., August 3, 1967. Copy of letter attached and identified as Exhibit A.

This dispute was handled on the property with all officers designated to handle such disputes, including carrier's highest designated officer, all of whom have declined to make a satisfactory adjustment. The agreement effective July 1, 1921 (Reprint July 1, 1950) as subsequently amended is controlling.

POSITION OF EMPLOYES: It is the position of the employes' that the transcript of investigation does not substantiate any true facts that the claimant was guilty as charged, copy of transcript of investigation attached and identified as **Exhibit B.**

Castle's request since to do so would have been in direct violation of the agreement. He was not discriminated against in being chosen to go to the yard because what was done was entirely in line with what has always been done at Walbridge and other points. When it is necessary to send a shop track man to the yard, first preference is given to someone who has requested such rearrangement if his usage does not disrupt the shop track operations unduly. If no request has been made, the youngest man is chosen whose release will cause least disruption on the Shop Track. In this case, the youngest man who could most easily be released was Castle, and it cannot be said that he was discriminated against or treated any different than any other employe has been treated in similar circumstances.

The Board has also repeatedly held that it will not substitute its judgment for that of the hearing officers unless it is shown that the carrier acted arbitrarily or capriciously. Those conducting the investigation had the distinct advantage of observing the demeanor of the witness and weighing the logic, directness and sincerity of their responses. The Board cannot so place itself in that advantageous position and must give great weight to the Carrier's findings in this regard. It was known by those at the hearing that Castle's alibi must be viewed in the light of his habitual "sickness" excuse whenever an unpleasant task arose and his habitual "sickness" absenteeism when unpleasant work of a day or more appeared imminent. The record leaves little doubt that "sickness" was nothing more than a fabricated alibi.

In view of all of the circumstances, Castle should not be restored to service. He was a short term employe, being in service only 14 months before committing a flagrant act of insubordination following an unsatisfactory work record. He did not exhibit a desire to remain in the carrier's employ, and was justifiably dismissed from all service.

The claim is entirely without merit, and it 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.

Claimant, on August 3, 1967, was directed by the Foreman to oil journals on cars of iron ore. There is substantial evidence in the record to support Carrier's findings, after a hearing duly held, that Claimant refused and when pressed to comply feigned illness and marked off sick. He was dismissed from service for insubordination. We find that the dismissal was not arbitrary, capricious or unreasonable. We will deny the Claim. See our Award No. 4782 and Fourth Division Award No. 2401.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.

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