



Award No. 5786

Docket No. 5685

2-SCL-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO
(Carmen)**

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement, Car Inspector H. H. Bradley was unjustly suspended from service on March 1, 1967 and dismissed from service on March 13, 1967.
2. That accordingly, Carrier be ordered to restore him to service with seniority rights unimpaired, and all other rights and benefits accruing to his position, and that he be compensated for all time lost.

EMPLOYEES' STATEMENT OF FACTS: H. H. Bradley, hereinafter referred to as the claimant, was employed as a Car Inspector at Jacksonville, Florida, with a carman's seniority date of 6-30-1952. His record is clear of any previous discipline. On March 1, 1967, the claimant was working a regular assigned car inspector's position, 7:00 A.M. to 3:00 P.M. on the train yard of the Atlantic Coast Line Railroad (hereinafter referred to as the carrier) at Jacksonville, Florida. Upon reporting to work at 7:00 A.M. on March 1, 1967, the claimant was assigned to work a train known as Export Transfer. Upon completion of that train, the claimant returned to the car inspector's shack (office).

The claimant was verbally notified on March 1, 1967, by Mr. G. R. Gibbs, master mechanic, that he was suspended from service. Later on the same date he was cited by Mr. Gibbs for investigation at 8:30 A.M., March 6, 1967, "in connection with your scuffling with Car Inspector J. W. Gibson on March 1st, which resulted in personal injury to Mr. Gibson". He was charged with violation of Rule J as contained in the Safety Rules for the Government of Employes in the Mechanical Department, and Rule 32, paragraph B of the current agreement.

The investigation was held on March 6, 1967, with Master Mechanic G. R. Gibbs conducting.

On March 13, 1967, Master Mechanic Gibbs wrote the claimant advising him that he was dismissed from carrier's service.

Notwithstanding the above, the employes' contention of prejudice in this instance is disproved by the record, and completely unfounded. A hearing was scheduled and fairly conducted on March 6, at which time Mr. Bradley's abusive, unprovoked aggression toward Mr. Gibson was admitted and established by his own testimony, the testimony of his victim, and that of a witness. Even his local chairman admitted his guilt.

In summary, therefore, carrier submits that the employees' claim before your Board is completely without merit. Dismissal of this claimant by carrier was neither arbitrary nor founded in bad faith, as his guilt of the charges brought against him was established. While not brought out in the record, claimant's prior record, which included recent suspension for being intoxicated while on duty, was properly considered by carrier in arriving at the discipline to be assessed in this instance. Your Board has consistently held such action to be proper.

Your Board has further held repeatedly that discipline is necessarily a managerial discretion, not to be interfered with in the absence of bad faith. It was ruled in Second Division Award 3874, as follows:

"The Carrier's right to take disciplinary action against the Claimant under such circumstances cannot be doubted. Since the determination of a disciplinary penalty imposed upon an employe who has been found guilty of a wrongdoing necessarily involves managerial discretion, we have been reluctant to substitute our judgment for that of the Carrier's and, therefore, have consistently held that the Carrier's disciplinary action can successfully be challenged before this Board only on the ground that it was arbitrary, capricious or fraught with bad faith. See Second Division Awards 1323, 1575, 2996 and 3081. The record in the instant case does not show that the Claimant's dismissal was influenced by such unreasonable or illogical considerations on the part of the Carrier."

Carrier cannot allow its premises to become a battleground. There is no basis for a sustaining award in this claim, and carrier respectfully requests that it be denied in its entirety.

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.

This is a disciplinary case wherein Claimant became involved in an argument with a fellow employe. The latter was seriously injured, the substantial portion of the evidence presented at the hearing pointing to Claimant as the aggressor.

As a result of this altercation, Claimant was given a trial in the local Municipal Court, found guilty, and given a sentence of 30 days and a fine of \$100.00.

Carrier conducted an investigation into the matter. We have examined the testimony presented and find that the decision of the Carrier was based

on substantial evidence. The hearing was conducted in a fair and impartial manner; Claimant was given the opportunity to face his accuser, cross examine him, present witnesses on his own behalf and in all respects was given all rights and privileges to which he was entitled.

A W A R D

We will deny the claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1969.