



Award No. 5848

Docket No. 5759

2-PCT(NYNH&H)-CM- '70

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. 17, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO**

**PENN CENTRAL TRANSPORTATION COMPANY
(Formerly New York, New Haven and Hartford Railroad Company)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Mitchell Pierce regularly assigned painter at New Haven Passenger Yard was unjustly, capriciously and arbitrarily dismissed from service effective December 7, 1967.
2. That accordingly the Carrier be ordered to restore Mitchell Pierce to service immediately and be compensated for all time lost, seniority unimpaired and all rights and benefits such as vacation, holidays, hospitalization, life insurance, etc., as provided under the Carmen's Agreement.

EMPLOYEES' STATEMENT OF FACTS: That Mitchell Pierce is employed as a painter in the New Haven Passenger Yard and will hereinafter be referred to as the claimant.

He was regularly assigned from 8:00 A.M. to 4:00 P.M. as a painter with rest days Saturday and Sunday.

The New Haven Passenger Yard is maintained and operated by the New York, New Haven and Hartford Railroad Company, hereinafter identified as the carrier.

The claimant was dismissed from service effective December 7, 1967, allegedly on account of excessive absenteeism and working unsafely.

This dispute has been handled with all officers of the carrier designated to handle such disputes, and all have declined to make a satisfactory settlement.

The agreement effective September 1, 1949, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that under the controlling agreement and in particularly Rule 34 which is pertinent to the instant dispute, that the claimant was unjustly and severely dealt with. That the carrier's charges were vague and not precise is evidenced by the charge of "working

In Second Division Award No. 1389, the Board stated:

"The primary question presented for decision is whether or not such action of the carrier was arbitrary, unreasonable or unjust. Being a discipline case, it is elementary that the Division cannot substitute its judgment for that of the carrier unless it was so tainted with one or more of such three elements of injustice."

Further citations from Board Awards are:

Award 11846 — First Division

"At the outset it should be understood that we recognize the principle that the imposition of discipline is the province of the Carrier."

Award 1041—Second Division

"It is well established that the action of the Carrier in discipline cases will not be disturbed unless the Carrier has acted arbitrarily, without just cause or in bad faith."

Award 1109 — Second Division

"This Board is loathe to interfere in cases of discipline if there is any reasonable ground on which it can be justified."

Award 4683 — Third Division

"We find no evidence of arbitrary action or caprice in the discharge of Claimant, and consequently could not, properly, if we would, substitute our judgment for that of the Management."

Carrier respectfully requests the Board to find that the instant claim should be denied.

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 employees 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.

Under date of April 27, 1967, General Foreman Brooks forwarded to Claimant a record of hours worked by him in the period January 1, 1966 to week ending April 8, 1967 with a covering letter warning Claimant that if his work record did not improve disciplinary action would have to be taken.

On June 26, 1967 Claimant was charged with "Excessive absenteeism." After hearing held Carrier found Claimant guilty as charged and the discipline assessed was 'Reprimand'."

Under date of November 15, 1967, Claimant was charged:

"Please arrange to be present at a hearing to be held in the General Foreman's Office, New Haven Passenger Yard, at 10 A.M. Tuesday, November 21, 1967 in connection with the following charges:

Excessive absenteeism.

Working unsafely.

You may, if so desired, be accompanied by one or more persons of your choosing, subject to the terms of your agreement, without expense to the company."

After hearing held Carrier on December 7, 1967 served NOTICE OF DISCIPLINE on Claimant:

"This is to advise that you have been found guilty of the following offenses,

1. Excessive absenteeism.

2. Working Unsafely.

DATE OF OCCURRENCE

Continuous

LOCATION OF OCCURRENCE

Passenger Yard

Accordingly you will be disciplined as follows:

Dismissed from Service—Effective December 7, 1967.

In administering discipline, your past record was taken into account."

From our review of the record we find: (1) Claimant was afforded due process; (2) Carrier's finding of "Excessive Absenteeism" is supported by substantial evidence; (3) Carrier's finding of "Working Unsafely" is not supported by substantial evidence; and (4) in view of the prior warning and subsequent "Reprimand" for excessive absenteeism the discipline imposed on December 7, 1967—"Dismissed from Service"—was reasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1970.