



Award No. 5923

Docket No. 5791

2-C&O-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 41,
RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO
(ELECTRICAL WORKERS)**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chesapeake and Ohio Railway Company violated the current agreement when it unjustly dismissed Electrician Randolph Vance from service on July 30, 1968.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to restore Electrician Randolph Vance to service and compensate him for all time lost subsequent to and including July 30, 1968, and restore all other benefits he would have had if he had remained in service.

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.

The facts and circumstances of this dispute are essentially the same as those in Award No. 5922, and the Board finds here, as it did there, that Claimant was unjustly dismissed.

A W A R D

Claim is sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: E. A. Killeen
Executive Secretary**

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

**CARRIER MEMBERS' DISSENT TO AWARD 5923, DOCKET NO. 5791
REFEREE ZUMAS**

What was stated in our Dissent to Award 5922 is, of course, equally applicable to this Award. In addition, it is to be pointed out that at the time of the investigation this Claimant had been off work because of an alleged physical incapacitation and, insofar as the record is concerned, there had been no change in his condition. Accordingly, he would not be entitled to any recovery under the award until such time as he is physically capable of resuming work.

For these and other reasons, we dissent.

/s/ J. R. MATHIEU
J. R. Mathieu

/s/ H. S. TANSLEY
H. S. Tansley

/s/ H. F. M. BRAIDWOOD
H. F. M. Braidwood

/s/ W. R. HARRIS
W. R. Harris

/s/ P. R. HUMPHREYS
P. R. Humphreys