



Award Number 5960

Docket Number 5796

2-RDG-CM-'70

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O.
(Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Car Inspector Eugene S. Thompson was unjustly dismissed from the service as of January 13, 1968.
2. That accordingly, the Carrier be ordered to reinstate Car Inspector Eugene S. Thompson to service with seniority rights unimpaired and compensate him for all time lost retroactive to January 13, 1968, including any vacation pay due and Health and Welfare benefits due during the period held out of service and until such time as he is restored to service, plus 6% interest on all monies awarded him.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector Eugene S. Thompson, hereinafter referred to as the claimant, entered the service of the Reading Company, hereinafter referred to as the carrier, December 2, 1947, as coach cleaner and was subsequently promoted to car inspector, the position in which he was employed at the time of dismissal, January 13, 1968.

On January 16, 1968, division general supervisor, locomotives and cars, R. P. Ciarrocchi, directed a letter to the Claimant citing him for investigation at 1:30 P.M., Friday, January 19, 1968, on charge of "being absent from your assignment during the hours 2:00 A.M. to 7:00 A.M., Saturday, January 13, 1968, and falsification of time card covering the period 11:00 P.M., Friday, January 12, 1968, to 7:00 A.M., Saturday, January 13, 1968."

The hearing was held on Friday, January 19, 1968, as scheduled.

Under date of February 8, 1968, General Division Supervisor R. P. Ciarrocchi wrote the Claimant advising him that he was dismissed from the service of the Carrier.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including Carrier's highest designated Officer, all of whom have declined to make satisfactory adjustment.

young lady. Again, the claimant refused to explain or comment upon his alleged activities off company property.

Carrier submits that a review of the entire transcript reveals the justification of Carrier's action in dismissing the claimant.

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.

Claimant, a Freight Car Inspector at Wayne Junction, Philadelphia, Pa., was assigned to a 11:00 P.M. to 7:00 A.M. turn. He reported as scheduled at 11:00 P.M. on January 12, 1968, and submitted a time card indicating that he had worked a total of 8 hours, itemized as follows: 4 hours as a Freight Car Inspector, 2 hours coupling air hose, and 2 hours closing car doors.

At approximately 4:45 A.M. on January 13, 1968, two Philadelphia Park Guard detectives came to Wayne Junction and requested claimant to accompany them to police headquarters. Later, Carrier was informed through a Police Investigation Report that claimant had been arrested for assaulting an 18 year old girl at 2:00 A.M. on January 13, 1968, at Montgomery Drive and Brick Row, a Public Park in Philadelphia, Pa., and charged with Assault With Intent To Ravage, Sodomy, Agg. Assault & Battery By Razor, Indecent Assault and Assault & Battery.

On reporting for work at 11:00 P.M. on January 13, 1968, claimant was told that he was suspended from service pending a hearing. On January 17, 1968 claimant was notified that a hearing and investigation would be held on January 19, 1968 to determine his responsibility, if any, in connection with his being absent from his assignment during the hours 2:00 A.M. to 7:00 A.M., Saturday, January 13, 1968, and falsification of his time card covering the period 11:00 P.M. Friday, January 12, 1968 to 7:00 A.M. Saturday, January 13, 1968.

At the hearing held on January 19, claimant admitted that, in leaving Carrier's premises in the company of the detectives at about 5:45 A.M. on January 13, he worked only 6 hours and 56 minutes, and not 8 hours as reported. He explained that he had prepared his time card at the beginning of the shift as was his normal practice. Claimant refused to answer any questions concerning the contents of the Police Investigation Report or his involvement in the alleged assault.

Subsequently, on February 9, 1968, claimant was dismissed from Carrier's service.

Patently, Carrier has the right to remove an employee from service pending the outcome of criminal proceedings filed against him where the alleged wrongful action away from work is connected with his job performance or his effectiveness or desirability as an employee, and where he refuses to answer the questions of Carrier's Interrogation Officer.

It is also apparent that the Police Investigation Report was relevant to an assessment of the Claimant's guilt or innocence of the Carrier's charges. Had it been placed in evidence at the hearing it would have had a bearing on the credibility of claimant's assertion that he was on Carrier's property continuously from 11:00 P.M. on January 12, until 5:45 A.M. on January 13. However, since the Carrier failed to make this report an integral part of the hearing, it cannot be given evidentiary value in the instant appeal.

Nevertheless, ample proof of claimant's culpability is contained in the transcript of the hearing. For one thing, claimant took a calculated risk in filling out his time card in advance. He knew or should have known that he would be disciplined if he were detected making phony time card entries. The circumstance that the Interrogating Officer agreed at the hearing to correct claimant's time card to show 6 hours and 45 minutes as the total time alleged to have been worked, does not mean that Carrier was willing to condone the deceit or forgive the wrongdoing.

Also, claimant's admission that he was off Carrier's premises from 5:45 A.M. to 7:00 A.M. establishes that he was absent from his assignment "during" the hours of 2:00 A.M. to 7:00 A.M. The showing that claimant was away from his assignment for any substantial portion of the time between 2:00 A.M. and 7:00 A.M. is sufficient to sustain the charge.

Significantly, neither did claimant ask his foreman to release him from duty at 5:45 A.M. nor did he tell his foreman, before leaving the premises that his time card entries were false.

Thus, on the evidence adduced at the hearing, claimant stands guilty as charged.

For purposes of determining an appropriate penalty, the claimant's employment record is a factor to be taken into account. A review of claimant's 20 years of service with the Carrier shows that discipline was applied to him on three occasions prior to the instant incident.

In the context of claimant's background of employment with the Carrier, and the record in this case, Carrier's decision to view the instant infraction as a major offense, deserving the discharge penalty, rather than impose some milder form of discipline, is not arbitrary, capricious or discriminatory. It is the considered opinion of this Board that such determination should not be overruled.

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 29th day of June, 1970.