

Award No. 6011
Docket No. 5871-I
2-IT-I-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

MR. ERWIN WALTER HAWKINS, JR. (Carman)
ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF PETITIONER:

This is my formal claim for re-instatement and compensation for time lost from my job for the Illinois Terminal Railroad.

PETITIONER'S STATEMENT OF FACTS: On July 26, 1968, a formal investigation was held by the Illinois Terminal Railroad. I hereby claim this investigation to be an illegal one. It should never have been allowed to take place for the following reasons.

Number 1. I was off with a valid reason.

- 1 A. My sister's husband had been killed in a car crash in Missouri, and I was needed by her, both for transportation home and for comfort during her time of grief.
- 2 B. I had told my foreman on July 5, 1968 that I may have been needed to be off because of a death in the family, which I did. I left work July 5, 1968.
- 3 C. I arrived home from the funeral July 8. That night while a friend and I were moving a refrigerator he dropped his end, causing me to injure my leg.

A statement by my friend, Mr. Duboise, is enclosed. See Exhibit "B".

Because I couldn't walk very well and we didn't have a telephone, I asked my wife to call into work for me. She didn't want to because one of the foremen, Mr. Charles Clark, had before, on occasion, cursed her over the telephone. Therefore, when she called she told the boss I had car trouble and would be in later.

A day or so later I found out what she had told them and immediately called myself to explain what had occurred.

Number 2. I was treated for my injury by one of the railroad's own doctors, Dr. Jacob Chalfin, and was given a release to go back to work.

When I called into work on July 16, 1968, Mr. Yonker, the Foreman, told me I would have to talk to Joe Eble, the general foreman. I finally got in touch with him on July 18 and I was told of the impending investigation.

Number 3. Mr. Cashon, who works for G. M. & O. Railroad in St. Louis, Missouri was General Vice Chairman of the board under Mr. W. E. Wheeler, General Chairman of the Brotherhood of Railway Carmen of America. Included is a statement from him to the fact that the investigation was illegal and if the same case had come up at G. M. & O. he would not have allowed them to hold an investigation.

Number 4. The investigation covered all of the time I worked for Illinois Terminal and even went back to my previous employment at G. M. & O. Railroad which I had resigned.

4 A. UNDER RULE 35 OF AUGUST 12, 1954

No grievance can be taken back more than sixty (60) days, which was no further back than May 27, 1968.

4 B. UNDER RULE 37

The employe and his representative are to be appraised of the precise charge, etc.

I think that the only issue at hand should have been discussed at the hearing.

4 C. UNDER RULE 22

An employe unavoidably kept from work will not be discriminated against, which I was.

An employe detained from work on account of sickness or any other good cause shall notify his foreman as soon as possible. I also did this under the circumstances.

Number 5. Sometime during the fall of 1968 after I was fired, I called Mr. C. E. Wheeler, General Chairman of the Brotherhood of Railway Carmen of America, and asked him if I could speak with him the next time he came to St. Louis.

Upon his arrival I went to see him, telling him I would like to return to work. He said he would speak to Mr. Horan of Illinois Terminal. After he talked to Mr. Horan, Mr. Wheeler called me, telling me Mr. Horan had said I could return to work, but I would have to speak with Mr. F. C. Barnhart, Master Mechanic, in Alton. I went to Alton and talked with Mr. Barnhart and was then told by him that I was accident prone and he couldn't see letting me come back to work.

Number 6. As further argument that I was the victim of wrongdoing: on June 20, 1966 my foreman fired me over the telephone when I called in to be off. And, I thought, he could do this. It was several weeks later when my Dad found out about this he said to get back to Alton, they could not fire me that way.

I called Mr. Joe Eble, General Foreman, and he said I could come back to work, but there would be an investigation. He asked me to come in and talk to him on July 5 and he said I could report to work the next day and work until the investigation.

They held the investigation July 20, 1966 and then four (4) weeks later my car broke down and I was to ride to work with one of my foremen.

When I got to his house he had already went to work at Alton, Illinois, which is twenty (20) miles away. So I went back home and the same day I received a letter saying I was suspended for thirty (30) working days as punishment for missing work while awaiting results of investigation.

When in reality, if anything, there should have been another investigation for that day. In other words, I got thirty (30) working days off without an investigation.

Now about the case now pending.

POSITION OF PETITIONER: In the spring of 1968, Mr. Wheeler, general chairman of the Board of Railway Carmen of America, called me into the office of the Illinois Terminal. Mr. Whitehead, Mr. Wheeler and all the bosses were present.

Mr. Wheeler told me in front of the bosses that if I laid off again, for any reason, the union would not back me. I say this was in violation of union rules and was in fact an open invitation for the railroad to do as they pleased in my case.

As my case progressed through all the channels up to the second division, each person referred back to Mr. Wheeler for their information.

As he had already said he would not back me; I say they got prejudiced information.

CARRIER'S STATEMENT OF FACTS: Claimant was fired by the carrier on August 2nd, 1968, due to continual absenteeism after proper notice and a formal investigation held by Mr. Hawkins' Supervisor, Master Mechanic F. C. Barnhart.

Union's General Chairman, Mr. C. E. Wheeler, next interceded to the carrier in claimant's behalf. On October 8, 1968, Mr. Wheeler wrote to carrier's supervisor of personnel, Mr. J. W. Horan, who is carrier's highest officer designated to handle claims and grievances pursuant to provisions of the Railway Labor Act. Mr. Horan set a conference to consider Mr. Hawkins' case and the parties met on October 17, 1968 and conference was confirmed by letter dated November 7, 1968.

Carrier is of the opinion that the claim involved herein has become null and void and the case is closed due to claimant taking over nine months to present his claim to the appropriate division of the National Railroad Adjustment Board (which in this case is the Second Division) from the time carrier's highest officer designated to handle claims and grievances denied the claim. The pertinent rule in support of carrier's position in this respect is paragraph 1 (c) of Article V of National Agreement dated August 21, 1954, which reads as follows:

"1 (c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

The facts in this case indicate that this dispute was denied by the highest officer designated by the carrier to handle such disputes on November 7, 1968. Pursuant to Article V, 1 (c) of the August 21, 1954 National Agreement, it was incumbent upon the claimant to submit his case to "the appropriate division of the National Railroad Adjustment Board" within 9 months from November 7, 1968. This case became barred on August 7, 1969. Carrier has not been informed as to the date notice of intent was received by the Second Division, but the Board's records will reflect the exact date of receipt of claimant's notice of intent to file an ex parte submission. Should the date be August 8, 1969, or thereafter, consideration of this claim is barred by the clear and unambiguous provisions of Article V, paragraph 1 (c) of the August 21, 1954 National Agreement. Carrier requests the Executive Secretary of the Second Division to reveal the records of the division in this respect and that if claim herein is barred, carrier requests the Board to render a dismissal award on this dispute.

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 discipline case, involving a charge of continual absenteeism. The record shows that the Claimant worked on July 3, 1968. His wife called Carrier on July 9 and misinformed Carrier as to the reason for Claimant's

absence. On July 18, the Claimant did call and informed Carrier of the true reason for his absence. The record shows that he was treated by a doctor on July 15, 16, 17, and 18 in 1968. The Claimant was suspended for 30 days because of excessive absenteeism. His absenteeism in 1967 was not flagrant. From January 1, 1968 to the date of investigation on this case, July 26, 1968, this Claimant was absent 64 days out of 140 working days, and the record discloses that on some of these days, he failed to inform his foreman.

Under these circumstances, this Board has no other choice than to uphold the Carrier in its action dismissing this Claimant from service.

Some of the other awards upholding this decision are Nos. 5049 (Johnson), 4956 (Harwood), 3874 (Anrod), 4854 (Hall), and 3933 (Johnson).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1970.