



Award No. 6077
Docket No. 5884
2-PCT(PRR)-MA-'70

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. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinist)**

PENN CENTRAL TRANSPORTATION COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier unjustly suspended Machinist Harry Piechocki from June 4, 1965 until August 31, 1965, inclusive.

2. That the Carrier be required to compensate Claimant for the time he was held out of service, and strike the discipline from his record, as provided in Rule 7-A-1, paragraph (d) of the Schedule Agreement.

EMPLOYEES' STATEMENT OF FACTS: The instant dispute arose at the carrier's Sunnyside Yard, New York, where Appellant Harry Piechocki was employed as a machinist, on the first trick, at the air brake shop.

On June 4, 1965, carrier notified appellant that he was being held out of service pending investigation, trial and decision in connection with his suspected involvement in an unauthorized activity incident to his possession of intoxicants while on duty at Sunnyside Yard on June 3, 1965.

The investigation was held on June 4, 1965.

On June 17, 1965, appellant was notified to appear for trial, to be held at 10:00 A. M., June 24, 1965, in connection with the following charges:

"Being involved in an unauthorized activity incident to your possession of intoxicants while on duty at Sunnyside Yard, N.Y., June 3, 1965.

Violation of Rules 7 and 9 of the General Rules of the Pennsylvania Railroad for employees not otherwise subject to the Rules for conducting Transportation, Sunnyside Yard, N.Y., June 3, 1965."

The trial was held on June 24, 1965.

or acted in bad faith. It is also the position of this board that we cannot substitute our judgment for the carrier. Awards 11017 (Dolnick), 10642 (LaBelle), 10595 and 10596 (Hall)."

In view of all the foregoing, carrier submits that there is no proper basis on which your board can reverse the carrier's action in this case. The claimant was afforded a fair trial, the finding of guilty is supported by substantial evidence, and the discipline imposed was not unreasonable in light of the serious nature of the charge. Accordingly, your honorable board is respectfully requested to deny the employees' claim.

Without waiving its position as set forth above, the carrier asserts that if your board should find in favor of the employees, which the carrier emphatically denies there is any reason for your board to do so, insofar as the monetary claim is concerned, which reads, "be required to compensate claimant for the time he was held out of service," the claimant would only be entitled to be compensated for the difference between the amount he earned while out of service or while otherwise employed, and the amount he would have earned had he not been held out of service. This is specifically provided for in rule 7-A-1(d) of the applicable agreement, reading:

"When an employe is held out of service in connection with a major offense pending trial and decision, and the decision exonerates the employe so held out of service the employe will be compensated for the difference between the amount earned while out of service or while otherwise employed and the amount he would have earned had he not been held out of 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 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 were given due notice of hearing thereon.

Claimant, following an investigation conducted by Carrier, was found guilty as charged. As a result of this investigation, he was dismissed from service and subsequently reinstated with his seniority rights unimpaired.

The claim before us alleges that he was unjustly suspended from June 4, 1965 until August 31, 1965, the period during which he was held out of service. The Organization demands that Carrier be required to compensate him for the period of suspension and that the discipline imposed be stricken from the record.

In examining the transcript of the investigation, we are convinced that the evidence presented was sufficiently substantial to warrant Carriers finding of guilty. We do not agree with the Organization that the charge lodged against claimant was vague. On the contrary it was clear and precise and could in no way prejudice the preparation of his defense. The evidence is conclusive of his guilt. Carrier did not act in an arbitrary and capricious

manner. Indeed the contrary is true and the best evidence of this is the reduction of dismissal to the approximate 90 day suspension. We will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1970.