



Award No. 6078
Docket No. 5885
2-PCT(PRR)-EW-'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. (Electricians)**

PENN CENTRAL TRANSPORTATION COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Electrician F. W. Gates, was unjustly dealt with when he was dismissed from the service of the Carrier, effective November 15, 1968 for allegedly falsely claiming a personal injury at the Enola Locomotive Facilities of the Carrier.

2. That accordingly the Carrier be ordered to compensate Mr. F. W. Gates for all time lost as a result of its unjust action.

3. That the Carrier be ordered to restore Mr. Gates to service, with seniority, vacation and other rights, unimpaired.

4. That the time lost by Mr. Gates as a result of his unjust dismissal, be credited as days worked by Mr. Gates for the purpose of computing qualifying time for vacations, insurance coverage, etc.

EMPLOYEES' STATEMENT OF FACTS:

1. Mr. F. W. Gates was employed by the carrier with seniority date of January 14, 1945.

2. Mr. Gates was a regularly assigned electrician on the 11:00 P. M. to 7:00 A. M. shift at the Enola Locomotive Facilities, Harrisburg, Pa.

3. Mr. Gates was given a hearing on November 6, 1969 on the following charge:

"Falsely claiming a personal injury to yourself at approximately 4 A. M. on October 7, 1968 at Enola Locomotive Facilities."

contrary, the discipline imposed upon the claimant, after a proper investigation, was fully warranted.

Finally the carrier submits that if your Honorable Board should rule, contrary to the overwhelming evidence set forth in considerable detail above, that the claimant is not guilty of the offense with which charged and that he should receive some compensation, the amount claimed by the employees in their statement of claim is in excess of that provided for in the applicable rule of the schedule agreement. In this respect, attention is invited to rule 7-A-1(d), quoted below for ready reference:

“RULE 7-A-1

* * * * *

(d) When an employe is held out of service on a charge and he is later exonerated, the charge shall be stricken from his record and he shall 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 on the basis of his assigned working hours actually lost during the period.”

Thus, if your Honorable Board should find that the claimant is due some compensation, and this the carrier denies, rule 7-A-1(d) clearly provides that he shall be compensated for his net wage loss, if any, resulting from being held out of service. It can readily be seen that a claim for compensation for “all time lost,” qualifying time for vacation and insurance, etc., is clearly contrary to the express terms of the applicable agreement. The carrier submits that at most the claimant would be entitled to the difference between the amount he earned while out of service or while otherwise employed and the amount he would have earned on the basis of his assigned working hours actually lost during the period.

In summary, the carrier asserts that this claim is not properly before your Board since the claim under consideration has not been presented on the property. Furthermore, by appealing for leniency, the claimant, in fact, admitted his guilt of the offense and the extension of leniency is solely the prerogative of the carrier. The carrier asserts that clear and conclusive evidence has been advanced in the trial record to support the charge. The carrier's action in disciplining the claimant was in no way arbitrary, malicious or in bad faith and the measure of discipline assessed was commensurate with the offense committed.

Therefore, in view of all of the foregoing, the board is respectfully requested to dismiss or deny the employees' appeal and claim in this matter.

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.

This is a disciplinary case wherein after an investigation by the Carrier, Claimant was dismissed from the service. A review of the record before us, shows conclusively that the claim was originally submitted to the Carrier and handled subsequently through the appropriate channels on the basis of a request for leniency. The claim now before us is at fatal variance with that handled on the property. We are left with no alternative but to dismiss this claim since it is in clear violation of Section 3, First (i) of the Railway Labor Act. Ample precedent for such a dismissal has been cited by the Carrier and need not be cited here. Claim dismissed.

AWARD

Claim dismissed.

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.