

Award No. 6101
Docket No. 6020-I
2-EL-I-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

JOSEPH E. TUZZO, PETITIONER (Carman)
ERIE LACKAWANNA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. For giving me a hearing on errors on my inspection forms at Croxton Piggy Back Yard. The only thing wrong on my inspection forms were two human errors; as to putting the wrong date on my inspection forms, and on inspection form in question was if the trailer was empty or loaded which is not a responsibility of the car inspector. These human errors are very common and have occurred numerous times to every inspector on the job, due to rushing and the heavy volume of business. There was never any action taken against any other man for making the same errors by the company, therefore I feel that I was discriminated against by one of the persons mentioned above in this matter. My duty as car inspector states I am responsible for the inspection of mechanical parts, damaged parts and safety equipment, all of which I had no violation of neglecting.

2. Taking all of my seniority from me by not permitting me to replace a junior man of my choice by exercising my seniority, and then trying to force me to accept only one position of their choice, being taken out of service and dismissing me from service and stripping me of all seniority and removing my name from the Car-men's Roster when my case was still pending under appeal by myself and the Union. The job they tried to force me to accept was to work at Penhorn Car Shops as a car repairman.

The reason I would not accept that job was because it was a hazard to my health and they were informed by me why I refused and they still removed me from the Roster and dismissed me without giving me any consideration on my part.

During 1961 and 1962, I worked on the repair track and contacted a very serious skin condition in June of 1962 from the grease and oil. From this I was out of work, disabled until October 1962, when I returned to work on the same job. My first day back, my skin broke

out again and I could not work again. I returned to the company doctor who was treating me and in November 1962, I was released by him. He sent report to the company with me, which I gave to the General Car Foreman, who at that time was Mr. James Mullaney. It stated that I should not work around any grease or oil any more as it was a hazard to my health. Mr. Mullaney informed me at that time that I was unable to work the repair track any more as ordered by the doctor. I was kept out of work until August 1964 before I was allowed to accept a job at the trailer yard by Mr. Mullaney.

I feel that I was discriminated on by being forced to accept htis same position in November 1967 and January 1968 by Mr. A. Nies, General Car Foreman and Mr. M. J. Fedorke, Master Mechanic, who at the time knew I could not accept this position because they were informed of it by me.

PETITIONER'S STATEMENT OF FACTS: I have been a car inspector since September 6, 1949 and I feel I should be given some consideration in this matter on such minor charges.

I also feel that I should be reinstated with my full seniority on the carmen's roster and be compensated in full pay for the time lost over a period of the last two years, as I have had no source of income in that period of time. I also feel that my wife and children have suffered a great deal over this matter and should also be compensated.

Enclosed are all correspondence and letters of proof from the Honorable Congressman Dominick V. Daniels, with whom I have been trying with his help to get a hearing to appeal my case in front of the National Railroad Adjustment Board since June 1968.

CARRIER'S STATEMENT OF FACTS: Mr. Joseph E. Tuzzo, hereinafter referred to as claimant, was employed as trailer inspector at Croxton Piggyback yard from August 24, 1964 to November 15, 1967, on the 4:00 P. M. to 12:00 midnight shift. It was claimant's duty to inspect all trailers entering and leaving the yard and to record specific information on trailer reports. This information was then used for per diem assessments, cleaning charges, etc.

A check of the records showed that claimant was not properly performing his duties as trailer inspector, and based thereon, as has been a practice on this property under the rules agreement, a meeting was held on November 16, 1967, among Master Mechanic M. J. Fedorka, General Foreman A. Nies, BRC Local Chairman Roman P. Wicherski, and claimant. At the meeting it was mutually agreed that claimant was disqualified from work in the Piggyback yard and would displace to another location. Claimant exercised his seniority to a position in Penhorn shop, but did not thereafter report for duty and notwithstanding agreement reached on November 6, 1967, requested that a formal hearing be held.

On November 24, 1967, the hearing was held in accordance with schedule agreements account improperly performing his duties, and claimant was assessed 20 days' suspension and disqualified from working in the Piggyback yard. The suspension was applied to the 20 working days prior to the notification of discipline.

It follows that such a claim instituted for the first time to this board is outlawed and is not properly before the board for consideration. This has uniformly been held by all divisions of the National Railroad Adjustment Board (see among others Second Division Awards 2088 and 4353). It should be so held here by a dismissal decision. Without prejudice thereto, carrier directs attention to the fact that no rule of agreement or otherwise permits an employe to absent himself from work without permission. Rule 16 of the agreement provides for leaves of absence and as claimant did not request or was he granted same, he definitely was absent without permission and should not because of his own improper and imprudent act. Concerning the 20 days' discipline, carrier directs attention to the fact that the discipline was applied during the period when he was improperly absent. Concerning the claim for compensation, carrier stresses the fact that this was claimant's own fault and not that of carrier. Claimant was well aware of the fact that if he did not respond to work, his name would be removed from the roster and he would be considered resigned. Logic dictates that as claimant voluntarily resigned, there can be no justification for a monetary or any other claim on his behalf. The claim that his wife and children be compensated is also not timely and properly before this board for consideration for obvious reasons and in any event should be denied as the Divisions of the National Railroad Adjustment Board by their own pronouncements have historically held that they are not empowered to deal in equity, which, of course applies with equal force to the claimant.

Based upon the foregoing facts, reasons and authorities, carrier respectfully submits that this claim should be dismissed or denied for lack of merit and rules support.

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 no jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Carrier's highest designated officer of appeal denied the claim in a letter dated August 8, 1968. No appeal to this Board was made until February 10, 1970, eighteen months thereafter. Article V, Section C of the August 21, 1954 National Agreement provides that appeals to the Board must be made within nine (9) months from the date of the last denial. There is no showing that the time limit was at anytime extended. Under these circumstances, there is no alternative but to conclude that the claim is barred.

In Award No. 5250 this Division said:

"It is unfortunate that Claimant is not experienced in the procedures prescribed by the Railway Labor Act and is not fully aware of the time limits contained in Article V of the August 21, 1954 Agreement. Such inexperience and unawareness is no valid reason to ignore the explicit provisions of the Act and the Agreement * * * ."

This finding is applicable and is affirmed.

AWARD

Claim dismissed.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1971.