



Award No. 6136
Docket No. 5941
2-SLSW-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Welder Melvin Geiggar, Pine Bluff, Arkansas, was unjustly dismissed from service effective August 1, 1968.

2. That accordingly the Carrier be ordered to restore Carman Welder Melvin Geiggar to service with seniority and vacation rights unimpaired.

3. That the Carrier be ordered to reimburse Carman Welder Melvin Geiggar for all time lost subsequent to August 1, 1968, until returned to service.

4. That the Carrier be ordered to pay his Hospital and Surgical and Medical Benefit and Life Insurance Premiums to which he was entitled under a negotiated Agreement, for all time that he is held out of service.

EMPLOYEES' STATEMENT OF FACTS: Carman Welder Melvin Geiggar, hereinafter referred to as the claimant, was hired by the St. Louis Southwestern Railway Company, hereinafter referred to as the carrier, at Pine Bluff, Arkansas, as carman apprentice on August 22, 1966, and was subsequently temporarily promoted to a carman welder, which assignment he was working at the time of his discharge. Under date of July 5, 1968, claimant received letter over the signature of General Car Foreman G. C. Martin, citing him for investigation at 9:00 A. M., July 15, 1968, on the charge that he had violated general regulations 4 and 8 of the general regulations and safety rules governing mechanical and store employees, alleging that he gave false reasons for being absent from work June 14 and 17, 1968, and was therefore absent from duty without proper authority. Claimant received letter under date of July 5, 1968, over the signature of General Car Foreman G. C. Martin, advising him that formal investigation would be held at 9:00 A. M., July 16,

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.

As of May, 1968, Claimant was employed at Pine Bluff, Arkansas, as a Carman Apprentice and working under temporary promotion as Carman Welder. At that time he was found guilty in Municipal Court of the charge of indecent exposure, which was apparently based on his having relieved himself in public one night. At the time the Carrier brought charges in this connection, the conviction was under appeal. Some days after the first conviction, Claimant encountered the person who had brought the charges against him, and asked him why he had had him arrested. This apparently led to an altercation, the details of which do not show in the record. Claimant was charged with disturbing the peace. He eventually decided to forfeit bond rather than contest the charge.

His second case was on the court docket for Monday, June 17. On the afternoon of Friday, June 14, he went to the plant and told his foreman that he would not be able to work his shift that evening and probably also on Monday because he was in court. There was no court session on Friday.

The Carrier charged Claimant with violation of General Regulation 4 with regard to his "immoral conduct" in the first instance and "improper conduct" in the second instance and with violation of General Regulations 4 and 8 in giving "false reasons for being absent." Separate hearings on these three charges were held on the property on successive days on July 22-24. Claimant was dismissed on August 1, 1968.

Regulations 4 and 8 read in pertinent part as follows:

"4. Employes who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way, that their railroad will not be subjected to criticism and loss of good will, will not be retained in the service. . . .

8. Employes must not absent themselves from their duties, exchange duties with nor substitute others in their place, without proper authority."

The Carrier contends that protest was belatedly filed forty days after the dismissal; that the evidence developed in the investigations proved claimant guilty of violating the rules as charged; that a finding of guilty on any one of the three charges was sufficient to justify the discharge; that the severity of the penalty was further justified by three prior written warnings for absenteeism; and that many Board awards sustain Carrier's right to discipline for events that occur off the property outside of working hours.

The Organization contends that the applicable limit on presentation of grievance is sixty rather than thirty days; that the first two charges are based on events that occurred off the property outside of working hours and were not serious enough to warrant dismissal; that the application of the General Rules is specifically limited to situations in which the duties of the employees are affected; that the evidence against the Claimant on the first charge at the hearing on the property consisted solely of the court records indicating a finding of guilt, which could not be considered as conclusive in view of the pending appeal; and that there is no showing that Claimant gave false reasons for his absences on June 14 and 17.

Regarding timeliness of the grievance, we find that the controlling provision is not the thirty-day limit in Rule 22 of the Agreement effective November 1, 1953, but rather the sixty-day limit in Article V of the General Agreement of August 21, 1954, with the Non-Operating Employees, effective January 1, 1955. The protest was therefore timely.

Regarding the first charge, we find that it gave no just cause for discipline for two reasons. First, the only evidence of guilt presented at the hearing consisted of court records showing a conviction that was still under appeal. Second, we find that the action complained of did not violate the General Regulations, because it occurred off company property outside of working hours, was unrelated to the employment relationship or to Claimant's fitness for the job, and did not subject the Carrier to criticism or loss of good will.

The General Regulations state in their introduction:

"The rules and regulations herein govern the designated employees of these Railway lines, and must be observed by such employees whose duties are in any way affected thereby."

We consider that their application to off-property, off-job occurrences is limited to actions that are in some clear way job-related or significantly affect the carrier's image. If their application were not so limited, there would be grave doubt that the unilaterally-imposed rules could be considered reasonable and therefore enforceable. Awards cited by the Carrier, wherein the Board has denied reinstatement when discharge involved actions off the job outside of working hours, appear to concern instances that did involve the employment relationship, fitness for the job, or the good repute of the Carrier. Our Award 261, on the other hand, is a particularly appropriate reference for the present case.

The second charge, which, so far as can be determined from the record, may not have involved anything much more serious than a loud argument, cannot prevail for the same reason that there is no showing of any clear relationship to Claimant's employment.

Regarding the third charge of giving false reasons for absence, we find in the record of the hearing no substantial evidence to support the finding of guilt. In reaching this conclusion, we do not substitute our judgment for that of the hearing officer regarding credibility of witnesses, but rather base our finding on the crucial testimony of the foreman:

"He came to me about 2:45 P. M., June 14, and stated that he had to attend court and had not gotten through and he would be unable to work and it was possible he might be late to work Monday, June 17.

Did he indicate that the reason he might be late to work Monday, June 17, 1968, was also due to attending court? Yes, sir."

It seems clear that the employe was not saying that he had to go to court still that afternoon, and that the foreman did not understand him to mean this. Rather, he was saying that he had a court case pending, which would probably not be completed until late Monday afternoon. This was an accurate factual statement. Our conclusion is further supported by the report of the foreman to his superiors concerning the prospective absences, which was written that same afternoon. It stated in full:

"Car Welder M. Geiggar reported in person to me at 2:45 P. M. that he was in court and would be in court until about 3:30 P. M., Monday. He could not work this date and would be late if he worked Monday, June 17.

Rest days Saturday and Sunday."

It is clear that the foreman knew perfectly well that Claimant was not standing before him in the plant and stating that he was at the same time in the courtroom. The phrase "he was in court" could only mean that he had a case pending. Thus, the fact that the court did not meet on Friday does not prove that a false reason was given. Claimant may very well have needed the time to consult his lawyer or to think through his decision as to whether or not he would contest the charge of disturbing the peace. Nor does the fact that he eventually decided to forfeit bond prove that he was not actively occupied with his case on Monday or that he did not perhaps even attend the court session. We find no substantial evidence in the record that the reason for his absence on the two days was other than the one he gave of having a pending court case.

We find, in summary, that the transcripts of the three hearings do not contain substantial evidence in support of any of the three charges of violation of General Regulations 4 and 8, and that the discharge was therefore arbitrary and without just cause.

With regard to remedy, Rule 24-4 of the Agreement provides that a reinstated employe shall be "compensated for the wage loss, if any." We are therefore not authorized to sustain Claim 4, regarding insurance premiums.

AWARD

Claims 1 and 2 are sustained.

Claims 3 and 4 are denied. Instead, Carrier shall reimburse Claimant for wages lost, less any amount earned, since date of discharge.

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.

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