

Award No. 6158

Docket No. 5996

2-RDG-CM-'71

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. 109, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Car Inspector James A. Wiley was unjustly given a "Ten (10) days suspended suspension", February 17, 1969.

2. That accordingly the Carrier be ordered to remove from claimant's service record this charge and discipline administered.

EMPLOYEES' STATEMENT OF FACTS: Carman James A. Wiley, hereinafter referred to as the claimant, has been employed by the Reading Company, hereinafter referred to as the carrier, at City Branch, Philadelphia, Pennsylvania since February 14, 1948. On January 19, 1969, claimant was working as a car inspector in the Carrier's Wayne Junction TOFC Yard.

By letter dated January 22, 1969, General Supervisor Locomotives and Cars, R. P. Ciarrocchi cited claimant for investigation to be held on Thursday, January 30, 1969, at 9:00 A.M. on the following charge, reading in pertinent part:

"In accordance with Rule No. 34 of the agreement between System Federation No. 109 and Reading Company, you are hereby notified to present yourself for hearing and investigation in connection with personal injury sustained by you on January 19, 1969 at Wayne Jct. TOFC Yard, and your previous personal history of injuries sustained by you as an employe of the Mechanical Department."

Investigation was held as scheduled.

Local Chairman, under date of February 2, 1969, wrote supervisor locomotives and cars to further protest the investigation and requesting that hearing transcript be cancelled.

left forearm
left thumb
left index finger
left middle finger (three times)
left ring finger
left knee cap
left thigh (two times)
left leg (two times)
left foot
back (two times)
penis
groin
right shoulder
right hand (three times)
right knuckles
right thumb (two times)
right forefinger
right little finger
right elbow
right hip
right knee (two times)
right shin
right foot

These injuries have caused the claimant to lose fifty-seven working days. Clearly the claimant's injury record reveals him to be a menace to both himself and his fellow workers. Carrier contends it has an obligation to resort to disciplinary measures to impress upon an employe the absolute necessity for careful, safe and prudent work habits. Carrier only requires that its employes perform their duties diligently and safely, not that they compile a ritual of anatomical sacrifice.

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, wherein claimant after having been afforded a hearing, was given a ten (10) days suspended suspension.

The Organization advances the argument that the charges lodged against the claimant were imprecise, that the hearing officer not only preferred the charges, but also acted as Judge, Prosecutor, and Jury, and that the hear-

ing as conducted was not a fair and impartial one. Carrier categorically denies the validity of these arguments.

A review of the transcript of the hearing itself convinces us that the hearing officer did not function as a finder of facts, but rather evidenced a clear and definite pre-disposition and pre-determination of the claimant's guilt. The record of the hearing, particularly at the beginning, illustrates beyond question that the hearing officer had already decided that claimant was guilty before he had become involved in the interrogation relative to the substantive matters involved.

The hearing was not fair and impartial, and, as such, was violative of due process as well as the basic collective bargaining agreement. We will sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1971.