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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6392
Docket No. 6191
2-WRR-ATW-'72

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (Local Union 14182, International Union of District 50,
(Allied & Technical Workers of the United States and
(Canada
(Winifrede Railroad Company

Dispute: Claim of Employees:

"An unadjusted dispute between the Int's Union of District 50, ATW and the Winifrede Railroad Company, involving a discharge grievance of Kenneth Rumbaugh, who is a member of B.U. No. 14182"

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.

Notice of hearing before Board was duly given. Carrier appeared but there was no appearance by claimant or Petitioner, counsel for claimant advised that neither he nor his client would appear.

This Board was established pursuant to the Railway Labor Act of 1934, to consider, review and determine disputes between Railroads and their employees.

The Employer herein is a specialty carrier, apparently directly connected with the coal mining industry in West Virginia. Its employees are represented by a Union. At the time the dispute, subject matter of this Award, arose, the National Bituminous Coal Agreement of 1968 was the controlling agreement in effect between Carrier and Petitioner and applicable to the employees in the unit represented by the Union. Said agreement provides that a discharged employee who "believes he has been unjustly dealt with", may invoke its "Settlement of Local and District Disputes" clause. That procedure differs from that provided for in the National Railroad Agreements. However, the parties mutually submitted to the jurisdiction of this Board for determination of their differences.

Unlike most records placed before us in matters involving disciplining of employees, we do not have a transcript of the grievance hearing at which an attempt was made to ascertain the facts upon which action was taken by the Carrier against the claimant. The local representatives of the Petitioner refused to permit a record to be made thereof, according to the uncontroverted statement of the Carrier. We are left to assess this case from the documents presented by the parties.

The affidavit of a management employee sets forth that he personally undertook a physical investigation of the work practices of the claimant and observed that he failed to appear for work one morning until at least four hours past his scheduled reporting time. On a morning shortly thereafter, he and another supervisor had the claimant's place of work under surveillance and again observed him appearing for work approximately four hours past his scheduled starting time. Claimant was the sole employee on duty between one a.m. and eight a.m., had no supervision and was relied upon and trusted to appear for and perform his assigned duties. He daily turned in a time sheet showing in his own handwriting hours worked. On both days reported above, claimant submitted time sheets on which he reported that he had worked an entire seven and one quarter hours, contrary to the alleged observations of supervision that showed he had worked only three and three quarter hours those mornings. The affidavits, which purportedly were recordings of the essence of statements made by the affiants at the grievance hearing, were those of the above referred to Management employees and the company clerk. They aver that at a confrontation between supervision and claimant, the aggrieved admitted that he had on more than the two occasions cited appeared for work long after his starting time and he falsely recorded the time he had worked. At the grievance meeting, claimant denied making such statements and having entered a plea for leniency.

Without the benefit of hearing and the seeing of the witnesses and without a transcript of the grievance hearing, we are called upon to determine the credibility of those who were privy to the incidents involved. Based upon the record before us, we had no choice but to hold that the carrier met its burden of establishing substantial evidence to support its action against the claimant.

It is regrettable that an employee with more than thirteen years of service should suffer termination of his employment. This Board is not empowered to substitute its judgement for that of the Employer as to the penalty to be imposed when we are satisfied that a charge of substantial misconduct was adequately established. (See Awards of this Division 1323, 3092, 2087, 2769, 3874, 4000, 4001, 4098, 4132, 4195, 4199, 4693, 6196, 6240).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October, 1972.