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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6401
Docket No. 6219
2-CSS&SB-CM-'72

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

Parties to Dispute: (Railway Employes, Department, A. F. of L. - C. I. O.
((Carmen)
(
(Chicago, South Shore and South Bend Railroad

Dispute: Claim of Employes:

The Chicago South Shore and South Bend Railroad, hereinafter referred to as the Carrier, unjustly dismissed Carman William C. Beach, hereinafter referred to as the Claimant. This action by the Carrier was arbitrary and unreasonable.

The Carrier be ordered to reinstate the Claimant with full seniority and all other rights unimpaired, full payment of all time lost, plus 6% per annum on all monies due to Claimant.

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.

The Organization seeks the reinstatement of employe who was dismissed following damage to a station platform and to the car operated by employe. There was no objection to the notice of hearing or to the conduct of the hearing made at the hearing.

At the end of the hearing, the hearing officer found that damage to the platform was caused by the car operated by the employe through the rocking of the car on the track as it passed the platform. It was also found that the employe was negligent in failing to look over the equipment he had operated, and that he did not make out forms required by law to show the defects when a safety appliance is concerned. After the hearing, the employe filled out the required forms. After reviewing the employe's past record, he was dismissed.

The Organization contended that the tracks were in such bad condition that the car would rock and hit the platform while passing it at any speed. It argued that the employe was not required to fill out forms because he had completed his assignment and had moved the car about ten to fifteen minutes later as a favor to the employe on the next shift. In any event, employe claims that he did not know that the car had struck the platform.

In order to change the hearing officer's findings we would have to decide that it was not supported by sufficient evidence or was arbitrary and capricious, Second Division Award No. 4781, 3267. Employe was charged with responsibility for damage to the platform, to the car and for not filling out forms.

The testimony at the hearing provided sufficient evidence to show that the employe knew that the tracks along the platform were in bad condition; that, by his own admission, he operated in excess of the maximum speed which he admitted knowing had been set because of the condition. Therefore, he was responsible for what happened. He was responsible for filling out the required forms or seeing to it that they were filled out because he was involved. Another employe testified that he told claimant the platform was torn down. Later claimant says he knew the platform had been damaged before anybody told him. He did not examine the car he had operated.

The objection made later by the Organization that the Terminal Supervisor took over the conduct of the hearing is without merit. The hearing officer asked him if he had any questions to ask. They were in the nature of cross examination.

We will not substitute our judgment for that of the hearing officer in this case.

The matter of penalty is subject to review, Second Division Award No. 6236. Carrier stated that claimant's past record was reviewed in its letter of dismissal. No prejudice has resulted from our seeing the record even if the abstract was not formally discussed on the property. The Organization had knowledge that it had been reviewed when it discussed the case with the Carrier. It could have asked to see it. Claimant's record was no secret to him. Disregarding three accidents with damage to equipment within fifteen months for which there was no discipline, there were two suspensions from duty and a reprimand within less than sixteen months. The last was only two months before this incident. The penalty was not arbitrary or capricious nor can we find it to be unduly harsh or severe. This is not a case for the Board to substitute its judgment where safety of operation is required.

The rules submitted in Carrier's submission to which the Organization has objected because they were not submitted on the property have had no bearing on our findings which are based on the testimony of the hearing and the claimant's past record.

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 16th day of November, 1972.