

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

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Port Terminal Railroad Association

Dispute: Claim of Employees:

1. That the Port Terminal Railroad Association unjustly dismissed Laborer James L. Vincent from service on May 12, 1972 and has unjustly held him out of service since that date.
2. That accordingly, the Port Terminal Railroad Association be ordered to reinstate Laborer James L. Vincent to service and make him whole to the following extent:
 - (a) With his seniority rights unimpaired;
 - (b) Compensation for all time lost;
 - (c) Make whole all vacation rights;
 - (d) Paid premiums (or hospital dues for hospital, surgical and medical benefits for all time held out of service;
 - (e) Pay premium for his group life insurance for all time held out of service.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

There is substantial evidence in the investigation record to support the charge that the Claimant violated Port Terminal Railroad Association Rules and Regulations No. 46 and No. 50. He carelessly and recklessly drove Carrier's vehicle transporting other Carrier employees. The complaint was made by the employees so transported by the Carrier. At the time of the incident Claimant did not contend that he was ill. Only at the hearing, which took place more than a year after the occurrence of the incident due to Claimant's hospital confinement, did he say that his poor, reckless and careless driving on September 22, 1971 was because he became ill just before driving the other employees to their destination. If that was so he should have reported and another driver would have been assigned.

Claimant was employed by the Carrier on October 31, 1969. On November 17, 1970 he received a ten day suspension for failure to protest an assignment and properly perform his work. In 1971 before the instant incident, he received two verbal and two written reprimands and a 15 day suspension. He was in and out of Veteran's Hospital from September 29, 1971 to March 6, 1972. All told he was on the Company payroll less than two years. With that short term of service and work record, he is entitled to no consideration for a reduction in the penalty. Carrier's decision to terminate his employment was not arbitrary, capricious or unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of January, 1974.