

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6625
Docket No. 6526
2-B&O-CM-'74

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

Parties to Dispute: (System Federation No. 30, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carman W. E. Bishop was unfairly treated by being discharged from the service of the Carrier on September 26, 1972.
2. That the Carrier be ordered to reinstate Carman Bishop to full service with seniority unimpaired and paid for all time lost and including all coverages under the working agreement.

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.

Claimant was "charged with responsibility in connection with failure to properly perform assigned duties on September 13, 1972 in connection with disassembling cleaning, and repairing service portion freight air brake valve. After an investigation he was dismissed from service.

Two investigations were actually held. Both charged the Claimant with failure to properly perform his duties. One related to incidents prior to September 13, 1972 and the other for an incident on September 13, 1972. The transcripts are voluminous. Some of the testimony supports Carrier's charges, some of the evidence has an element of uncertainty and some is even conflicting. But by and large and technically, however, there is sufficient substantial evidence in the record to justify a finding that the Claimant had failed to properly perform his assigned duties.

But in view of the fact that the Claimant was an employe of the Carrier for 28 years prior to his dismissal with a good work record, and in view of the fact that the record does raise some unanswered questions, the Board believes that the penalty of dismissal is too severe. Claimant has already lost about 15 months of employment with this Carrier. That is more than a sufficient disciplinary penalty.

For the reasons herein stated, it is the finding of the Board that the Claimant be reinstated as an employe of the Carrier with full seniority unimpaired and preserved, but with no compensation for lost earnings.

A W A R D

Carrier is directed to reinstate the Claimant as an employe with full seniority and all contract rights preserved and unimpaired, but with no compensation of any kind for lost earnings and fringe benefits from the date of his dismissal to the date of his reinstatement.

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..