

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 41, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Chesapeake & Ohio Railway Company

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company violated the current agreement when it unjustly dismissed Electrician Randolph Vance from service on July 30, 1968.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to restore Electrician Randolph Vance to service and compensate him for all time lost subsequent to and including July 30, 1968, and restore all other benefits he would have had if he had remained in 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 employe or employees 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.

Pursuant to an Order entered by the U. S. District Court for the Eastern District of Kentucky remanding two sustaining Awards to this Division for clarification of our Awards, the Board makes a further finding with respect to Claimant's monetary recovery.

In Docket No. 5791 (Award No. 5923) Claimant was charged with falsifying his reasons for being absent from his regular assignment on January 28, 1968. Investigation and hearing was originally scheduled for February 7, 1968, but was postponed several times by Claimant or his representative because of illness.

On Saturday, June 15, 1968, while the investigation and hearing were pending Claimant was observed by Carrier officials sitting at a table rented by his teen-age son at a place called the Ashland Swap meet. A Carrier official purchased four dated pennies from Claimant for \$.50. Claimant was charged with engaging in other employment while absent on leave. Hearing and investigation of this charge (later identified as Docket No. 5799 - Award No. 5927) were combined with hearing and investigation of the earlier charge, and both were finally held on July 9, 1968.

As a result, Claimant was found guilty as to each charge and dismissed from service effective July 30, 1968. Claimant filed two separate grievances, each claiming unjust dismissal and compensation "for all time lost subsequent to and including July 30, 1968, and restore all other benefits he would have had if he had remained in service."

Each of the Grievances was sustained, effective April 30, 1970, and directed Carrier to restore Claimant to service and to compensate Claimant for all time lost subsequent to and including July 30, 1968. The Awards did not make specific findings as to whether such lost time had actually accrued, or whether the Carrier was to pay for lost time, if any had accrued, at the full rate or at a rate adjusted by the amount of disability or unemployment compensation received by Claimant.

As determined by the Court, Carrier there upon ordered Claimant to undergo a physical examination prior to re-entry into service, and at the conclusion of the examination Claimant was found to be unqualified for railroad work. Thereafter, Claimant was granted a disability annuity by the Railroad Retirement Board effective April 26, 1970.

Accordingly, the Board directs Carrier (1) to make a determination as to whether such lost time had actually accrued during the period in question, and (2) if so, to pay Claimant for such lost time at a rate adjusted by the amount of disability or unemployment compensation received by Claimant.

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 11th day of March, 1975.