

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Chicago, Milwaukee, St. Paul & Pacific Railroad Company

Dispute: Claim of Employees:

Mr. J. E. Phillips, Laborer, Milwaukee Dieselhouse, was unjustly dismissed August 16, 1973, following investigation in which the Milwaukee Railroad failed to support the charges against him.

That, accordingly, the Milwaukee Railroad Company be ordered to make J. E. Phillips whole by returning him to the employment of the Milwaukee Railroad Company, compensating him for all time lost, and giving credit for fringe benefits, including, but not limited to, credit for vacation, sick benefits, railroad retirement benefits, supplemental pension, as well as removing all entries from his personal record referring to the improper and unjust discharge.

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 claimant was dismissed from service effective August 16, 1973 for engaging in a physical altercation with a fellow employe.

The evidence adduced in the formal investigation conclusively proved that the claimant was guilty. This Board has consistently held that such action on the part of claimant constitutes ground for dismissal. See Second Division Awards 1659, 2344, 6364, 6796 among many others. We will deny the claim.

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Award No. 7080
Docket No. 6861
2-CMStP&P-FO-'76

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 9th day of July, 1976.