

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

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Service Attendant J. E. Armstrong was unjustly suspended from service by Louisville and Nashville Railroad Company at Radnor Shops, Nashville, Tenn., on Dec. 15, 1973, and after a summary investigation on Dec. 28, 1973, was dismissed.
2. That accordingly, the Carrier be ordered to restore Service Attendant J. E. Armstrong to service with his seniority rights, all fringe benefits lost, all Health and Welfare benefits lost and compensated for all time lost at pro-rata rate of pay.

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, J. E. Armstrong, a Service Attendant with twenty-five years of clear service was dismissed from service on January 11, 1974, based on evidence brought forth at a formal investigation that the Claimant was asleep and under the influence of intoxicants while on duty about 4:00 P.M., December 15, 1973. The Claimant was very ably represented at the formal investigation held on December 28, 1973. Claimant and his representatives were allowed to present their witnesses and question company witnesses. We find that the Carrier has met its burden of proof in the instant case with substantial evidence. However, based on the narrow circumstances contained in this record, we find that the discipline of dismissal is excessive. We require then that the Claimant be reinstated to service with all seniority rights restored, but without back pay. Claims for Health and Welfare benefits is denied as per a long line of Awards.

A W A R D

Claim sustained to the extent indicated in Findings.

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 14th day of July, 1976.