

The Second Division consisted of the regular members and in addition Referee James C. McBrearty 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 and Controlling Agreement, Laborer S. B. Cochran, Louisville and Nashville Railroad Company; McDoel Yards; Bloomington, Indiana, was unjustly suspended from the service of the Louisville and Nashville Railroad Company on December 26, 1974, and after a formal investigation was held in the office of General Supervisor, Repair Track by Mr. W. L. Ellison, Master Mechanic on December 9, 1974, was subsequently dismissed from service on January 8, 1975.
2. That accordingly, Laborer S. B. Cochran be restored to his assignment at McDoel Yards; Bloomington, Indiana, with all seniority rights unimpaired, vacation, Health and Welfare, hospital and life insurance be paid and compensated for all lost time, effective December 26, 1974.

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.

In the instant case, Carrier found that Claimant failed to protect his work assignment at Carrier's car department facilities in Bloomington, Indiana, from Monday, December 9, 1974, through the date of hearing on Thursday, December 19, 1974.

The record before us reveals that after Claimant left home on December 10, 1974, he went into the State of Illinois, and was unable to return to Bloomington, Indiana, for reasons beyond his control, until December 26, 1974. On December 26, 1974, Claimant went directly to Carrier's facilities

in Bloomington, and reported to his General Foreman, but was refused permission to perform his duties by the Master Mechanic.

The record also shows that Claimant was a victim of very unusual and unfortunate circumstances, that he was a good and very reliable worker over the previous seven (7) years, without any discipline charges placed against his record prior to this instance.

Now, this Board has regularly refused to interfere with the determination of Carriers as to disciplinary action taken for proven infractions. However, we reserve the right to correct a penalty which is excessive or unreasonable. (See Second Division Awards 6485, 6236, 5703, and 3894). In Award 3894 the Board stated:

"... Carrier's decision to discharge Claimant may not be held to have been unreasonably related to: (a) the nature of Claimant's proven offense, or (b) Claimant's past behavioral record."

In applying these principles, we find that Claimant's dismissal from service of Carrier was excessive and unreasonable. It was his first offense of any kind recorded. Claimant was detained in the State of Illinois due to circumstances beyond his control. However, we are also mindful that a stable work force is a critical ingredient to the proper functioning of an industrial community. Therefore, we believe that a prolonged lay-off from work, with Claimant's seniority and other rights unimpaired, but without back pay or insurance benefits for time lost, will serve to impress upon Claimant that compliance with reasonable and necessary rules is essential if he is to maintain continuous employment and earnings.

A W A R D

Claim sustained to the extent indicated above.

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 12th day of July, 1977.