

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. 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, Service Attendant F. R. Radford, Jr., was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on April 23, 1975, after a formal investigation was held in the office of Mr. R. L. Spain, Staff Asst. to Manager on March 20, 1975.
2. That accordingly, Service Attendant F. R. Radford, Jr., be restored to his assignment at South Louisville Shops with all seniority rights unimpaired, vacation, Health and Welfare, Hospital and Life Insurance be paid and be compensated for all lost time, effective April 23, 1975.

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 a service attendant since his entry in service of the carrier on July 7, 1974 at the South Louisville Shops, Louisville, Kentucky until his removal by carrier on April 23, 1975. Claimant's assignment was Saturday through Wednesday, from 7:00 a.m. until 3:00 p.m. with Thursday and Friday as rest days. Claimant cleaned diesel locomotives and performed other general service attendant duties. On March 11, 1975 claimant received notice from the Division Manager he was charged with failure to follow instructions; not performing work assigned to him; being off his job without permission and reading a newspaper while on duty on Tuesday, March 4, 1975. An investigation hearing was held on March 20, 1975 and on April 23, 1975 claimant was notified he was dismissed from service of the Carrier.

Thereafter on May 22, 1975 the General Chairman filed a claim in accordance with the underlying agreement seeking to have claimant restored to service, compensated for lost time and other benefits. During the hearing testimony by three supervisory employees supported most of the charges while the claimant testified in his own behalf denying the charges. Some emphasis is placed upon the claim that no witness actually saw the claimant reading a newspaper. Moreover, it is claimed that three supervisors had given the claimant instructions and he could not satisfy them.

There is substantial and convincing evidence in this record to justify carriers' conclusion that claimant failed to follow instructions; that he failed to perform work as assigned; and that he was off his job without permission.

The claimant also asserts he was deprived of a fair and impartial hearing because of the alleged attitude of the hearing officer in questioning carrier's witnesses' feelings for terminating claimant's services. The employees contend such remarks and questions were prejudicial. We do not believe this contention has merit. The claimant's objections along these lines were not made until the General Chairman's letter of March 31, 1976 to carrier's highest officer following denial of the claim. Moreover, we are not convinced the questioning was prejudicial in any event.

This claimant is a short service employee and under all the circumstances here carrier's decision to dismiss him from service was reasonable and it cannot be overturned as arbitrary or capricious.

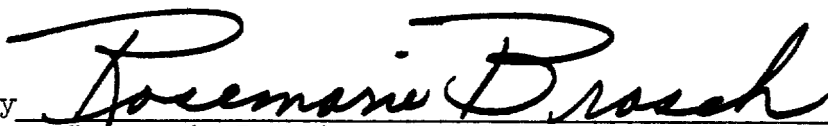
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of January, 1978.