

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Carman Kenneth Gille was unjustly dismissed from service on May 28, 1976.
2. It must be realized that there were extenuating circumstances in this case and the action of dismissing Carman Gille from service was arbitrary, capricious and unwarranted under those circumstances. The Carrier was completely in error in dismissing Carman Gille, an employe of 10 years of long and faithful service with an unblemished good service record, as dismissal is the ultimate penalty.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Carman Kenneth Gille with seniority unimpaired and compensate him for all time lost at 8 hours per day, plus any other benefits he would be entitled to under Rule 35.

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.

Claimant was dismissed from the service of the carrier for advising a fellow employe to claim an off-duty injury as an on-duty injury.

The facts in the case reflect that in a conversation held in the early morning hours when the claimant was in an inebriated condition he advised a fellow employe to claim that an injury obtained while playing football occurred while on duty. The following morning the employe took claimant's advice and lied to the carrier.

There is no excuse for the behavior of the claimant. As a union representative it is expected that he will advise his membership properly and not in such a manner as to be fraudulent of the carrier or to subject one of his membership to discipline. However, in view of the circumstances existing at the time the advice was given, we are inclined to be lenient in this case. Had such advice been given during regular business hours during an interview with one of his membership rather than in the early morning hours while in a state of inebriation we would have no compunction about sustaining the dismissal of the claimant. We do feel that the circumstances in this case should mitigate the punishment. This is especially true in this case where there is no evidence of other discipline problems with this employee during his service with the carrier.

Accordingly, we find that the claimant should be reinstated with seniority rights intact but without compensation for pay lost.

A W A R D

Claim sustained in accordance with this opinion.

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 21st day of July, 1978.