

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8012
Docket No. 7710
2-I&N-FO-'79

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. 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 L. E. Gray was unjustly dismissed from the service of the I&N Railroad Company on August 28, 1976, after a formal investigation was held in the office of Mr. R. L. Spain, Staff Assistant to Manager on August 5, 1976.
2. That accordingly, Service Attendant L. E. Gray 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 compensated for all lost time, effective August 28, 1976, at the 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 employee or employees involved in this dispute are respectively carrier and employee 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 after having been found guilty of making a false statement to Carrier concerning a matter under investigation. Claimant had stated that Service Attendant O. W. Cross had a bottle of whiskey in his possession when he rode from the South Louisville Shops to the Union Station with claimant. He subsequently changed his testimony to the effect that he had not seen a bottle of whiskey in Mr. Cross' possession at the time in question.

There is no question but that the claimant gave two different answers to the same question. The claimant states that this was due to his being nervous and under pressure at the time.

The record shows that substantive evidence of probative value was presented to support the charge. The penalty assessed is, however, too severe considering the nature of the offense and the surrounding circumstances. We will sustain the claim for all time lost beyond 90 days, which we determine to be an appropriate penalty.

A W A R D

Claim sustained in accordance with the 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 25th day of July, 1979.