

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: ( System Federation No. 4, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Richmond, Fredericksburg & Potomac Railroad Company

Dispute: Claim of Employees:

1. That Carman, Nell Bryant was discriminated against when unjustly dismissed from service as result of investigation held August 2, 1977, in violation of Rule 34 of the Shop Crafts Agreement.
2. Accordingly, Bryant is entitled to be returned to service with seniority rights unimpaired, compensated for all lost wages and all benefits and insurance accruing to all other employees in service.

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 employed as a carman at the Carrier's Potomac Yard facility. On March 29, 1977 the Carrier's Police Department was advised by the Arlington County Police that a grand jury indictment had been issued against the Claimant on the charge of "attempted murder of a police officer." The Carrier's police thereupon arrested the Claimant and delivered him to the public police authorities.

Subsequent to the events recited above, the Claimant was returned to duty at Potomac Yard. Between the dates of April 4th and July 2, 1977 the Claimant was absent from duty, for various reasons, on 16 occasions. On July 3, 1977 Claimant marked off sick and remained in this status until July 13, 1977. On or about that date the Carrier was advised by the Claimant's attorney that the Claimant had been sentenced to one year in jail as a result of criminal charges and that he was presently incarcerated.

On July 26, 1977 the Carrier charged the Claimant with failing to protect his assignment at Potomac Yard and scheduled an investigation on that charge for August 2, 1977 advising the Claimant that his past absentee record would also be reviewed.

The investigation was held as scheduled and since the Claimant did not appear the investigation was conducted in absentia. As a result of the investigation, the Carrier found that the Claimant's past absentee record justified termination and such action was taken. The claim was properly appealed through all the steps of the grievance process.

It is the position of the Carrier that the Claimant was properly terminated in that he failed to protect his assignment on all dates in question. Further, the Carrier argues that the Claimant, knowing that criminal charges had been placed against him and also aware that he was to be sentenced and incarcerated, failed to advise the Carrier of these facts but rather marked off sick and failed to protect his assignment up and until the investigation which concluded in his termination. It is the Carrier's position that the Claimant's incarceration could not excuse his non-performance of duty. Finally, it is the Carrier's position that although his absence from service due to his imprisonment was unavoidable, the Claimant placed himself in this position of being absent from service.

It is the position of the Organization that the Claimant was denied a full and fair hearing and that Rule 34, Investigations, which provides that:

"No employee will be disciplined by suspension or dismissal without a fair hearing by a designated Officer of the Company. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of these rules. At a reasonable time prior to the hearing, the employee shall be apprised of the precise charge against him. He shall have reasonable opportunity to secure the presence of necessary witnesses, without expense to the Company, and shall have the right to be represented by a duly authorized Representative."

Although argument has been raised that the Claimant was not given sufficient notice of the charges against him or proper opportunity to attend the hearing, these arguments fall in the face of the record. It is clear from review of the record, that the Carrier took all required and necessary steps to advise the Claimant of the charges against him and to provide Claimant with the opportunity to defend himself against those charges. It cannot be alleged that the Carrier had any responsibility for the Claimant's failure to know or to attend the investigation. The Claimant's inability to attend the investigation was due to his own actions and the Carrier was justified in imposing discipline. The prior absentee record of the Claimant was introduced for the purposes of justifying the measure of discipline imposed. The record does not indicate that the Claimant was tried on any charge but the charge of failing to protect his assignment during the 1977 time frame.

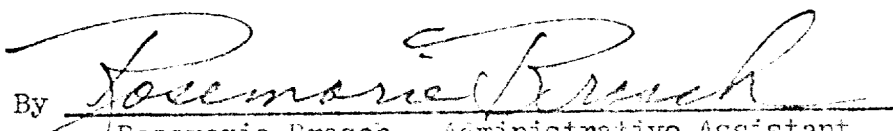
There is no indication in the record before us that the Carrier's action was arbitrary or that there was not clear supporting evidence for the Carrier's action. Therefore, we hold that the Claimant was justly and properly terminated.

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 28th day of November, 1979.