

The Second Division consisted of the regular members and in addition Referee Higdon C. Roberts, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists
and Aerospace Workers
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation dismissed in all capacities Machinist John W. Bronson, for unfair, unjust and unreasonable reasons.
2. That John W. Bronson be restored to service at the 59th Street Engine House, Chicago, Illinois with all lost wages paid in full and all rights unimpaired.

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.

Procedural questions have been raised by the organization in this case. At the hearing on the property, the grievant's right to representation is limited to himself and/or the organization. It is only before the Board that other representation of his choice is allowed. The carrier, once having admitted the lawyer to represent the grievant at the initial hearing, would have been more consistent had they not denied the same representation at the appeal. Neither the organization, nor the carrier, should have permitted the lawyer at the hearing on the property.

The inconsistency, however, did not prevent a fair hearing, and was not fatal to the Carrier's case.

The grievant admits guilt in violation of Rule 8-1-1. However, there is need to consider the fact that his sister had died, and his failure to mark off is understandable in these circumstances. The death of a close relative is normally very upsetting and can affect clear thinking and subsequent actions.

That the grievant pushed the general foreman is also apparent from the record. However, he did not try very hard to "inflict bodily harm" and, when calmed down, left the company property. This action, though unacceptable, can also be explained by the grievant's state of mind resulting from his sister's death.

These mitigating circumstances, plus the grievant's record, makes discharge too severe. The grievant is ordered reinstated with seniority unimpaired, but without compensation for time lost.

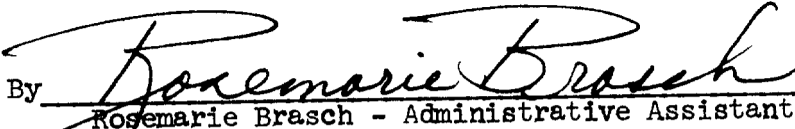
A W A R D

Claim sustained to the extent indicated in the Findings.

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 May, 1980.