

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { System Federation No. 2, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That Laborer, Mrs. Gretta Williams, was unjustly dismissed from the service of the Alton & Southern Railway Company on December 1, 1978, on charges of alleged violation of Uniform Code of Safety Rules, General Rule N(3) Insubordinate.
2. That accordingly, the Alton & Southern Railway Company compensate Laborer, Mrs. Gretta Williams, at the pro rata rate of pay for each work day beginning December 1, 1978, until she is reinstated to service and in addition to receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer, Mrs. Gretta Williams, for her actual loss of payment of insurance on her dependents and hospital benefits for herself, and that she be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mrs. Williams an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 removed from service on October 28, 1978 pending the outcome of an investigation scheduled on November 2, 1978 to determine whether she refused to comply with supervisory instructions on October 27, 1978. Following this proceeding, she was notified by letter, dated December 1, 1978 that she was dismissed from service for refusing to obey Hostler Virgil Allen's directives and this disposition was appealed pursuant to Agreement Rule.

In defense of her position, Claimant contends that she was not provided a fair and impartial investigation. She argues that the hearing officer permitted the entry of hearsay testimony into the record, allowed Carrier to examine an excessive number of hostile witnesses and overruled pertinent objections raised by the Organization. She asserts that she did pour cooling water into Unit 1505 and thus observed her supervisor's directives.

Carrier, contrawise, contests these contentions and argues that she was provided an investigation that comported with the standards of administrative due process. It avers that she was not barred from introducing testimony and evidence relative to her position or from cross examining Carrier witnesses. It contends that she was provided ample opportunity to present a coherent and intelligent defense and was unable to refute the charged specifications. It asserts that the investigative record demonstrates that she failed to follow supervisory instructions in direct violation of General Rule N(3) of the Uniform Code of Safety Rules.

In reviewing this case, we concur with Carrier that Claimant was provided a fair and impartial investigation. There are no limitations or administrative trial standards setting forth the number of witnesses an advocate party can directly examine or prohibitions on hearsay testimony. It is up to the tribunal authority to determine the value and relevancy of hearsay statements. The Claimant was given an unrestricted opportunity to present forcefully her version of the incident and to impugn adverse testimony.

The record shows that she failed to follow her supervisor's instruction to pour cooling water into Unit 1505 and then refused to execute this task, when she was directed by Machinist Gary M. Stephens and Car Foreman G. M. Rehg. She later poured the cooling water into this Unit, as directed, but at a time when it was too late and well beyond the bounds of permissible conduct.

While we are constrained by the record to sustain Carrier's penalty, we think that her dismissal to date was sufficient punishment for this offense. We recognize, of course, that her prior disciplinary record raises a serious question as to whether she should be given one last chance and thus we are reluctant to modify Carrier's determination. But we believe, after carefully evaluating the record, that her dismissal since December 1, 1978 served its intended disciplinary purpose.

Accordingly, we will restore Claimant to service, without back pay with the conditional proviso that we will sustain without hesitation, a dismissal penalty, if she again manifests such deplorable behavior. This is her one last chance to prove that she can be an exemplary employee.

A W A R D

Claim sustained to the extent expressed herein.

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Award No. 8437
Docket No. 8333
2-A&S-FO-'80

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 August, 1980.