

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { John O'Connor, Petitioner
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

The disciplinary action brought against me is unjust. How can an employe be dismissed for charges that were proven false in a formal investigation? The reason for my dismissal is not solely based upon the charges. I believe I have been falsely accused because I was injured on the job, and filed a suit against the Chicago and North Western Transportation Company.

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, a freight car inspector, was dismissed from service for reckless driving on company property, failure to protect his assignment and leaving his duties early but improperly collecting wages for his full shift. The employe argues that he was unjustly singled out for discipline because he had an argument with the security guard who cited him for reckless driving and also because he had instituted legal action against the carrier. Also, the claimant contends there was insufficient evidence to support any of the charges. The carrier urges us to dismiss the claim due to the claimant's failure to properly appeal his grievance in accord with the applicable collective bargaining agreement and the Railway Labor Act.

At the outset, this Board takes judicial notice that an identical claim, brought on behalf of this employe, has been fully and finally adjudicated in Second Division Award No. 7938 (Franden). Under the principles of collateral estoppel, the parties are prevented from relitigating this claim and, thus, the dispute is moot. Third Division Award No. 22713 (Mangan). Because the claim was rendered moot by the prior award, we are precluded from addressing either the carrier's procedural assertions or the claimant's arguments on the merits.

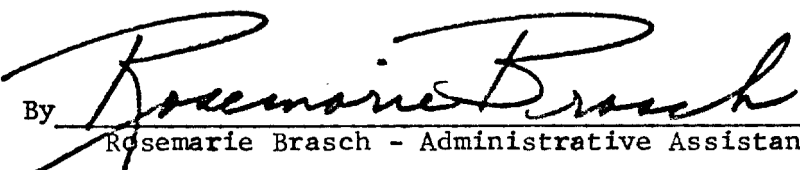
A W A R D

Claim dismissed.

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 7th day of January, 1981.