

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: ((International Brotherhood of Firemen and Oilers
(Seaboard System Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement Laborer A. T. McDonald, I. D. No. 174472, was unjustly dismissed from service of the former Seaboard Coast Line Railroad Company, presently known as Seaboard System Railroad Company, on December 10, 1982, after a formal investigation was held in the office of Master Mechanic R. L. Murphy, Jr., Hamlet, North Carolina.

2. That accordingly, Laborer A. T. McDonald be restored to his assignment at Hamlet Car Shop, Hamlet, North Carolina, with all seniority rights unimpaired, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid, and compensated for all lost time effective December 10, 1982, at pro-rata rate of pay and the payment of 10% interest rate be added thereto.

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 employees 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. T. McDonald had been employed by the Carrier for approximately three years as a Laborer when he was charged and found guilty of violating Rule 12. The Investigation was completed on October 28, 1982 and the record supports the fact that the Claimant, by his own admission, had clearly violated the Rule. The charges being substantiated, the Claimant was dismissed from the Carrier's service.

This Board finds in the record no disagreement between the Organization and Carrier as to Claimant's guilt or the seriousness of the Claimant's action. The Organization argues on the property that because of the Claimant's mental state the discipline imposed is excessive. The Carrier maintains that the seriousness of the offense justifies dismissal.

This a unique discipline case in that while the Claimant clearly violated Rule 12, the Organization has raised a defense of mental instability, and argues that at the time of the Investigation the Claimant was under medication which removed the instability which caused the violation. There is firm evidence in the record that the Claimant suffered severe mental problems. In the September 8, 1982 Investigation, a letter by the psychologist states that the Claimant was referred for psychological evaluation and that initial results indicated the Claimant's flagrant violation was related to his psychological state of mind. The record of the Investigation documents psychiatric hospitalization and drug treatment for mental instability. Psychological and medical authorities state unequivocally that the Claimant's behavior was directly related to his medical state. As Robert Fleury, M.D. put it, "the psychotic period which the patient was experiencing over the past several months is directly connected with the legal problems encountered."

The Board considers the circumstances herein as highly unusual and will treat this case accordingly. Claimant's guilt in the instant discipline case is beyond question, but the Claimant stated at the time of the Investigation that the cause of the act had already been removed as he was now under medication. This raises the question with this Board of whether permanent dismissal may be excessive punishment if the problem was eliminated by the time of the Investigation and no longer exists. On the other hand, this Board cannot ask the Carrier to maintain in its employ a Claimant who committed such an act unless he poses no further risks to the Carrier.

As such, this Board holds that the Claimant is guilty as charged, but that permanent dismissal may have been excessive discipline if the cause of the problem was completely eliminated as the Claimant stated in his defense. This Board maintains that the final arbitrator of the Claimant's present risk to the Carrier is the Carrier's own Medical Director, and none other. Within thirty (30) days of this Award the Claimant must provide all medical and psychiatric records necessary and submit to all further medical and/or psychiatric exams which the Carrier's Medical Director considers relevant to evaluate Claimant's present risk to the Carrier. If the Carrier's Medical Director finds any evidence whatsoever to counter the Claimant's defense of the discipline, in that Claimant is not restored to mental stability, then the original discipline imposed by the Carrier will stand undisturbed by this Board.

If the Claimant can now demonstrate to the satisfaction of the Carrier's Medical Director that he possesses no more threat to the Carrier, then permanent dismissal is excessive and Claimant should be given one last opportunity to prove his worth. If returned to service, it shall be with all seniority rights unimpaired, but Claimant will not be made whole for lost time and benefits.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of March 1986.