

Award No. 1300

Docket No. 1217

2-C&O-FO-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Firemen & Oilers)**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the seniority rights of Turntable Operator Lando Pennington were unjustly terminated on September 25, 1946, and that accordingly the carrier be ordered to reinstate this employe's name on the seniority roster as of April 28, 1925.

EMPLOYEES' STATEMENT OF FACTS: Lando Pennington, hereinafter referred to as the claimant, was employed by the carrier at Russel, Kentucky, whereat he was assigned as a turntable operator with a seniority date of April 28, 1925.

The claimant was discharged from the armed forces in 1943 due to his physical condition. The claimant sustained an injury in the service of the carrier in October, 1945. As a result of this injury and a nervous condition difficult to master, the claimant could not work regularly.

The claimant reported off duty to the roundhouse office over the telephone at about 8:30 P. M. Saturday, September 14, 1946, on account of the weakened condition of his injured ankle, which was sustained in October, 1945. The claimant was notified and instructed on September 23, to report for investigation on September 25, 1946, which is affirmed by copy of the record submitted, identified as Exhibit A.

Subsequent to the claimant's dismissal he applied for and has been awarded, effective as of April 13, 1947, disability annuity by the Railroad Retirement Board.

The Agreement effective September 30, 1938, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier was not unaware of the claimant's physical condition when discharged from the armed forces in 1943, and likewise the carrier was fully aware of the claimant's injured ankle which occurred in October, 1945. This personal injury in 1945 claimed the claimant from service for about three months. Thus, from the claimed days lost by the claimant, as alleged by the carrier, between March 10, 1943, and September 25, 1946, totaling about 806 days, including

within the jurisdiction of the National Railroad Adjustment Board;

and requests that the claim of the employes be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

The evidence in this case does not support Pennington's assertion that he reported off duty on September 14, 1946. Inasmuch as he was unable to recall the name of the person to whom he allegedly delivered the message, he should have supported his story by producing at least one other person who was a witness to the conversation.

Pennington's absence from work without permission was in direct violation of Rule 32 (b) of the controlling agreement. His poor attendance record discloses other instances of unauthorized absences, as well as repeated warnings that such conduct would not be tolerated. Under these facts and circumstances, the penalty of discharge was not unwarranted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1949.