

Award No. 1476

Docket No. 1384

2-C&O-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYEES: That the carrier be ordered to reinstate Car Inspector C. J. Gigliotti to service with his seniority rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Carl J. Gigliotti, hereinafter referred to as the claimant, was employed by the Chesapeake & Ohio Railroad as a carman apprentice on November 17, 1919 at Huntington, West Virginia; completed his apprenticeship on March 24, 1924 and continued in the carrier's service as a carman from that date to November 29, 1949.

The claimant's regularly assigned hours were 11:00 P. M. to 7:00 A. M. as a car inspector. Under date of December 2, 1949, the claimant was given a hearing on the charge of negligence of duty, intoxication and carrying a loaded pistol while on company property the night of November 29, 1949. The transcript of the hearing is submitted herewith and identified as Exhibit A, and as a result of said hearing a letter was directed to the claimant by Master Mechanic D. H. Richmond, discharging him from service effective as of his quitting time as of November 29, 1949, a copy of which is submitted herewith and identified as Exhibit B.

This case has been handled with the carrier officials designated to handle such affairs, who all declined to restore the claimant to service.

The agreement effective July 1, 1921, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the negligence of duty charge brought out the hearing was merely his failure to make a report of the work performed on a train of 47 cars before leaving the job on November 29, 1949, account of illness of his wife and hardly could be considered under the conditions, as just cause to separate the claimant from his position.

Insofar as the charge of carrying a loaded pistol is concerned, which was not denied by the claimant and the reason for having it in his possession was explained by the claimant which explanation was acceptable to the officers

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 claimant, Carl J. Gigliotti, was regularly assigned as car inspector 11:00 P. M. to 7:00 A. M., at Huntington, West Virginia. He was required to report daily at the 7th Street car inspector's shanty. Upon completion of his duties at that point, he was under instructions to report to his foreman at the passenger station to work the remainder of his assigned hours. On November 29, 1949, an incident occurred which resulted in claimant being dismissed from the service of the carrier on a charge of neglect of duty, intoxication, and carrying a loaded pistol on company property. The organization contends that carrier should be required to reinstate claimant to service with his seniority rights unimpaired.

On the night of November 29, 1949, claimant reported for duty shortly before 11:00 P. M., his regular starting time. He was advised by the second trick car inspector that there were cars to be pumped up at 11:02 P. M. Claimant says that he performed this work although he failed to complete records required to be kept by him, which would indicate that such work was performed. He was found in the car inspector's shanty by two special agents who testified that claimant appeared to be intoxicated. They testify that he required assistance in changing his clothes, that he staggered when he walked, and that the condition of his eyes and his actions generally were those of an intoxicated person. There is evidence of at least two other persons in the record who testify that claimant was or appeared to be intoxicated. Claimant admits that he drank three bottles of beer in the afternoon before coming to work. The record shows, also that claimant was arrested and pleaded guilty to being drunk in the Huntington City Police Court on November 30, 1949, and was fined \$10.00 and costs for the offense. The record further shows that claimant was carrying a loaded gun which he says he brought with him for the purpose of sale. The record shows further that claimant was again arrested on December 3, 1949, for brandishing weapons and was fined \$50.00 and costs on this offense. Claimant left his work at 11:40 P. M. without permission because, as he says, his wife had informed him by telephone that she was ill. He excuses his failure to fill out his reports with the statement that he often left them until the next day. Upon this evidence the claimant was dismissed from the service.

The investigation appears to have been held in accordance with the rules. The evidence clearly sustains the charge that claimant was drunk and, probably as a result thereof, failed to perform all the duties of his position. There is evidence that he has previously been warned against drinking while on duty. Considering all the evidence adduced, we cannot say that carrier acted arbitrarily or capriciously in dismissing claimant from the service. Nor can it be said that the carrier was arbitrary in refusing to reinstate claimant with seniority rights unimpaired, even though compensation for time lost was not included in the claim. Considering the nature of the offense, the previous warning, and the general attitude of claimant, we think that leniency, if any is to be granted, must be at the hands of the carrier and not of this Board. While it is true that this Board will on occasion reinstate employes who have been properly dismissed from the service, such action ordinarily results from the nature of the charge, the gravity of the offense, the past record of the employe, and subsequent mitigating circumstances, when all such indicate that the purposes of discipline have been accomplished and that the employe could be returned to service without expense

to the carrier, or detriment to the service. We cannot say that such a situation here exists that would warrant the intervention of this Board. No basis for the claim exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1951.