

Award No. 3067
Docket No. 2718
2-RDG-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- (1) That under the current agreement Car Inspector Albert J. Ottaviano was unjustly dismissed from the service on January 11, 1957.
- (2) That accordingly the Carrier be ordered to reinstate the aforesaid Car Inspector with seniority rights unimpaired and paid for all time lost retroactive to January 11, 1957.

EMPLOYEES' STATEMENT OF FACTS: A. J. Ottaviano (hereinafter referred to as the claimant) entered the service January 16, 1948 as laborer, at Port Reading, New Jersey, was promoted to packer and alternately through reductions in force worked as laborer, low pressure heating attendant and car repairer helper, he was promoted to car repairer December 5, 1949, changed to car inspector January 18, 1950 at which position he worked until dismissed January 11, 1957.

On December 19, 1956, General Car Inspector H. O. Ludwig directed a letter to the claimant citing him for investigation at 2:00 P.M., Friday, December 21, 1956, on a charge of "improper inspection of 19 cars on Interchange track, Manville, New Jersey".

The hearing was postponed by mutual agreement and finally held Wednesday, January 4, 1957; copies of postponement and hearing submitted herewith and identified as Exhibits B and C.

Under date of January 11, 1957, general car inspector wrote the claimant advising him he was dismissed from the service of the carrier effective January 11, 1957.

The agreement effective January 16, 1940, as subsequently amended, is controlling.

which claimant was involved, was warranted and justified. The discipline was not assessed arbitrarily, capriciously or without just cause and your Board has previously held that where the carrier has not acted arbitrarily, unreasonably, or without just cause, the judgment of the Board would not be substituted for that of the carrier.

The carrier directs attention to dissent of carrier members to Award No. 1830 wherein it is stated in part:

“The record is entirely devoid of any evidence that the Carrier acted arbitrarily, capriciously or in bad faith.

The findings and award are clearly a substitution of the judgment of the majority for that of the Carrier, an action they have no authority to take and which is contrary to the principle enunciated continuously in awards under similar circumstances issued by all divisions of the National Railroad Adjustment Board.”

That the carrier's judgment was sound in claimant's previous dismissal is amply supported by subsequent events. Here the same claimant, after being restored to service contrary to carrier's considered judgment, was again guilty of violating carrier's rules and instructions.

Under the facts and circumstances, it is the carrier's position that claimant was afforded a fair and impartial hearing in accordance with the requirements of Rule 34 (b) of the effective agreement and was found to be guilty of serious rule violations. The propriety of the discipline should not be questioned by the Board, as it was not assessed arbitrarily or without just cause. Carrier, therefore, requests that the claim as submitted to the Board be denied in its entirety.

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 testimony adduced at the investigation clearly shows that the claimant failed to fulfill his responsibility as a car inspector on December 13, 1956 in connection with his inspection of interchange cars and failed to inform his relief of work necessary thereon. Accordingly, he was properly found guilty of the charge and, in view of his prior record of discipline, dismissal was not too severe a penalty.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1958.