

Award No. 3366

Docket No. 3118

2-WT-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That under the current agreement Car Cleaner, Garrison Ware was unjustly dismissed from service on May 22, 1958.

(b) That accordingly, Garrison Ware is entitled to be restored to service and be compensated for all wage loss as the result of his unjust dismissal, retroactive to May 22, 1958 with seniority and vacation rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Garrison Ware, hereinafter referred to as the claimant, was employed as car cleaner on October 13, 1942 which position he worked until he was dismissed on May 22, 1958. On January 22, 1958 car foreman, Mr. C. M. Crabtree served formal notice to the claimant that he was notified to appear in the office of the assistant master mechanic at 1:00 P.M. January 29, 1958 in reference to being charged with leaving his assignment without permission and absenting himself from company property, and having in his possession alcoholic beverage during assigned tour of duty on Tuesday, January 21, 1958, a copy of which is herewith submitted as Exhibit A. The hearing was held as scheduled and a copy of the transcript of hearing is herewith submitted as Exhibit B. On March 17, 1958 master mechanic, Mr. J. A. Long, Jr. formally notified the claimant that effective March 27, 1958 he would be relieved from the service of the Washington Terminal Co. a copy of which is herewith submitted as Exhibit C.

This claimant's case has been handled in accordance with the collective controlling agreement, effective June 16, 1946, up to and including the highest designated officer of the carrier to whom such matters are subject to appeal, with the result that said officer on more than one occasion has declined to adjust this dispute, which is affirmed by copies of letters sub-

In Award 153, with Mr. J. P. Devaney sitting as referee, the Second Division stated:

"The control by the employer over the employe is the responsibility of the management. This Division should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer."

Other awards in which the question of the Board substituting its judgment for that of the carrier in disciplinary matters are: First Division Awards 7182 and 9542, Third Division Awards 891, 2766 and 5799, and Fourth Division Award 257.

In view of the convincing evidence of record, the carrier's action in dismissing Cleaner Garrison Ware was neither unjust, nor was it arbitrary, capricious or an abuse of the carrier's discretion in disciplinary matters. Therefore the carrier respectfully submits that the claim of the organization is without merit and should 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 waived right of appearance at hearing thereon.

The claimant was guilty of the offense with which he was charged. In view of his length of service and good record, however, and without in any way minimizing the seriousness of the offense involved, we think the penalty of dismissal was excessive. The amount of time already lost is sufficient discipline for claimant's infraction.

AWARD

Claimant shall be reinstated with seniority unimpaired but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1959.