

Award No. 4421
Docket No. 4272
2-C&O-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen and Oilers)**

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

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement, Coal Pier Laborer Luther Johnson was unjustly dismissed from the service of the carrier, effective January 9, 1961.

2. That accordingly the carrier be ordered to reinstate this employe with all seniority and employe rights unimpaired and pay for all time lost retroactive to January 9, 1961.

EMPLOYEES' STATEMENT OF FACTS: Coal Pier Laborer Luther Johnson, hereinafter referred to as the claimant, was employed by the carrier on October 31, 1951, at Newport News, Virginia, and since that time has performed his duties in a satisfactory manner.

On January 3, 1961, the claimant received a letter from J. W. Martin, assistant superintendent—coal piers, requesting that he attend investigation on January 5, 1961, on the charge of allowing his wages to be attached by the City of Newport News in the amount of \$8.06.

Investigation was held on January 5, 1961, as scheduled.

On January 11, 1961, Superintendent C. S. Savage, Newport News, Virginia, advised the claimant that he was dismissed from the service of the carrier for allowing his wages to be attached by the City of Newport News in the amount of \$8.06.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that such officers have declined to adjust the dispute.

The agreement effective April 16, 1950, is controlling.

should not substitute its judgment for that of management. In long-standing Second Division Award No. 153, Referee Devaney said:

“The control by the employer over the employe is the responsibility of management. This Division should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer.” (Emphasis ours.)

There is perhaps no precept more clearly established by the Adjustment Board than the above principle in discipline cases enunciated time and again by all the divisions. The carrier will not burden the record by repeated citations of the same principle. The carrier therefore submits that the claimants claim is without merit. Further, the carrier is fully supported by the precedent awards. Accordingly, the claim should be denied.

CONCLUSION: The carrier has shown:

1. The Second Division has no jurisdiction to decide this dispute and accordingly the claim should be dismissed without hearing the dispute further.
2. Notwithstanding the lack of jurisdiction of the Second Division to hear this dispute, but expressly not waiving the jurisdiction, the Carrier submits that there is no merit in the claim and accordingly it 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.

Parties to said dispute were given due notice of hearing thereon.

This is an identical situation to that contained in Awards 4419 and 4420.

That which we said in Award No. 4419 is equally applicable here.

AWARD

Claim dismissed, without prejudice, for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964.