Award No. 4552
Docket 4526
2-C&NW-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. The Chicago and North Western Railway Company unjustly dismissed Machinist D. Handel and Machinist Helper J. Sanchez, Proviso, Illinois Engine House on December 31, 1962.

2. That accordingly, request that Machinist D. Handel, Machinist Helper J. Sanchez, Proviso, Illinois Engine House be reinstated with seniority rights unimpaired and compensated at pro rata rate plus six percent (6%) interest for all earnings—fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since December 31, 1962.

EMPLOYES' STATEMENT OF FACTS: Machinists D. Handel and J. Sanchez hereinafter called the claimants have worked for the Chicago and North Western Railway Company hereinafter called the carrier for four years and seventeen (17) years respectively. There is no record of prior investigation and no record of discipline against the record of either claimant.

The claimants along with two others were charged and investigation was held on December 28, 1962.

On December 31, 1962, the claimants were notified of their dismissal from service.

Claim was handled and on March 14, 1963, appeal was made to Director of Personnel Mr. T. M. Van Patten.

Mr. Van Patten denied the claim.

Following a discussion of this dispute with Mr. Van Patten, he wrote the general chairman. The general chairman replied under date of June 18, 1963. Mr. Van Patten replied under date of June 28, 1963. The general chairman then replied to Mr. Van Patten. Nothing further was heard from the carrier.

lost, provided they could pass such examinations as are required under instructions currently in effect. These instructions require that employes who have been dismissed for an excess of sixty days are not to be reinstated unless they can pass certain examinations, including physical examination. For the information of this board, the general chairman arbitrarily refused to accept such reinstatement, although at least one of the claimants, Mr. Sanchez, indicated his perfect willingness to submit to physical examination.

While as indicated, claimants' dismissals were entirely justified, the carrier wishes to point out that even if this board for any reason finds any merit to his claim, there is no support whatsoever for that part of the claim reading "plus six percent (6%) interest for all earnings — fringe benefits (vacation, holidays, premium for hospital, surgical, medical and group life insurance) deprived of since December 31, 1962." If claimants in this case had been unjustly dismissed, which they were not, they would have been entitled to at most the difference between what they would have earned had they continued in service and their actual earnings during the time dismissed. This would not have included interest nor so-called "fringe benefits". The organization's demands in this respect are the equivalent of a request for a new rule, which is beyond the jurisdiction of this board. The board's authority is limited to interpretation of existing rules, and does not extend to promulgating new rules under the guise of interpretation of existing rules.

The carrier submits that the claim in this case should 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.

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

One claimant herein was employed by the carrier as a machinist helper—the other as a machinist. Each was employed at carrier's Proviso, Illinois, Engine House.

A careful and complete review of the record submitted to us reveals that on December 25, 1962, the two claimants absented themselves from their positions without permission and returned with the smell of an alcoholic beverage on their breath. Additionally on the same date, one of the claimants brought a partially filled bottle of an alcoholic beverage back to the property and the other claimant was insubordinate to his superior.

After a formal investigation the two employes were dismissed by the Carrier. They claim that they were unjustly dismissed and seek reinstatement with seniority rights unimpaired. Also, they ask for compensation at the pro rata rate plus six percent interest and for all fringe benefits for the time lost.

During the processing of the claim on the property the carrier, in what is said to be an attempt to settle the dispute on a leniency basis, offered to restore the claimants to their former positions with seniority rights unim-

paired and without pay for time lost, provided that each claimant would submit to a physical examination. At the time of this conditional offer the employes had been off work approximately 3½ months.

Because the leniency offer contained the condition of a physical examination the employes state that they had no alternative but to reject it. They assert as their reason that acceptance would be tantamount to an acquiescing in the promulgation of an new work rule. The carrier denies that it was without the right to make such a condition on its offer and asserts as its authority a rule, then current, which it says expressly covers the matter.

An offer from one of the parties to a labor dispute which seeks to settle the dispute on what is termed to be a leniency basis must be looked upon as an offer in compromise. The making of the offer should not be construed to be an admission of a insecure position, nor should a rejection of the offer be given significance. To give weight to either would tend to defeat the intent of the laws in this field which encourage, and sometimes direct, the parties to seek ways and means to compromise and settle their disputes by mutual agreement before resorting to their other remedies.

In the instant case the Carrier made an offer to settle the dispute. The offer was rejected. Whether the offer was proper or improper is not for us to determine for it was withdrawn by the carrier after its rejection and all questions concerning it are now moot. The employes stand in exactly the same position which they were in before the offer was made. They have not alleged that they have been hurt because of it. Therefore, we must dispose of this case on its merits.

The question for our determination is whether or not the claimants were unjustly dismissed. We are unable to say that they were. We do not find evidence within this record which would allow us to say that the carrier acted arbitrarily, capriciously or in bad faith in dismissing these claimants, and being without authority to direct that the carrier exercise leniency toward them we are constrained to find that the claims made to this Board by the employes must be denied.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.