

Award No. 4684

Docket No. 4468

2-B&O-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the current Agreement, Carman James L. Schimpf was unjustly dealt with when removed from service through capricious and discriminatory actions by the Carrier on September 28, 1961.

(2) That accordingly, the Carrier be ordered to reinstate James L. Schimpf with all rights unimpaired and that he be compensated for all time lost and made whole for all other rights provided for in the Collective Bargaining Agreement.

EMPLOYEES' STATEMENT OF FACTS: On October 14, 1958, Carmen B. R. Boop and Raymond Musto, employees of the Baltimore and Ohio Railroad Company, hereinafter called the carrier, were injured.

On the following day, October 15, 1958, the carrier's master mechanic conducted a hearing regarding the knowledge of Carman James L. Schimpf, hereinafter called the claimant, about the injury to Carmen B. R. Boop and R. J. Musto. Claim Agent M. D. Brickman was present. The claimant was represented by his committeeman.

Subsequently, Claim Agent M. D. Brickman conducted two additional hearings. The claimant was not represented at such hearings, nor was he or his committee furnished a copy of the proceedings.

In order to obtain a just settlement for their injuries, Carmen B. R. Boop and R. J. Musto sought legal help. During such legal proceedings, the claimant was summoned to testify and did so on June 23, 1961.

After September 6, 1961, after judgment was rendered against the carrier in behalf of Carmen B. R. Boop and R. J. Musto, the claimant was notified to appear at Dayton, Ohio (a distance of 76 miles from his home and 76 miles

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.

The Parties agreed that Dockets 4468 and 4469 would be handled simultaneously and that the Award in Docket 4468 shall be controlling.

The Claimant, James L. Schimpf, a Carrier employe for nine years, regularly worked the 11:00 P. M. to 7:00 A. M. shift as a Car Inspector at the Transportation Yard, Lima, Ohio.

On October 14, 1958, at approximately 11:30 P. M., Car Inspector B. R. Boop and R. J. Musto were seriously injured while inspecting some cars of Train No. 86 on Track No. 3, at the above mentioned Carrier facility.

On October 15, 1958, at a hearing conducted by Master Mechanic F. J. Rosenberg, the Claimant gave a statement of his version of the circumstances attending the injuries sustained by the Messrs. Boop and Musto. On December 16 and 17, 1958, on April 3 and 4, 1959, and again on June 23, 1961, the Claimant gave respectively a statement, a deposition, and testimony to Carrier Representatives, Attorneys and in a court proceeding. In the latter proceeding, which took place in June 1961, a judgment was rendered in favor of Mr. Boop.

On September 6, 1961, the Claimant was notified to appear for a hearing on September 14, 1961, at the Trainmaster's Office at Dayton, Ohio. The Carrier's charge was that the Claimant "furnished false information in one or more of the statements you gave on October 15, 1958, December 16th and 17, 1958, April 3rd and 4th, 1959, and June 23, 1961, in connection with injury sustained by B. R. Boop on October 14, 1958, at Lima, O".

On September 28, 1961, the Claimant was dismissed from the Carrier's service for furnishing "false information".

The record reveals that the Claimant, in answers to questions, made the following statements:

(From Organization's Exhibit A-2, Page 4)

"Q. How were you protected when you worked #2 track? * * *

A. We were making a "C" inspection of #86 train, but in case we had to change piston travel on any cars, I threw the switch on #2 track and locked it."

NOTE: A) The above is a portion of the statement the Claimant made and signed on October 15, 1958.

B) The Claimant and his Organizational Representative both agreed that the hearing was fair and impartial.

(From Organization's Exhibit B, Pages 1 and 2)

"Q. I presume you are familiar with the Blue Flag Rule?

A. Oh, yes.

Q. Have you always complied with it, while working in North Lima?

A. Yes.

Q. What do you do to comply with this rule?

A. I lock a track, blue flag it, notify the engineer and foreman when necessary and be sure that both ends of the track are locked.

Q. Have you had occasion prior to October 14, 1958 to work with Ray Musto and Berlin Boop?

A. Yes.

Q. And when this occasion has arisen have you seen them comply with the Blue Flag Rule prior to Oct. 14, 1958?

A. Yes.

Q. I understand the company has blue flag equipment located in the southwest, northwest, southeast and northeast corners of the yards?

A. Yes."

NOTE: A) Exhibit B sets forth the information the Claimant gave to Mr. M. D. Brickman, Carrier Claim Agent, in December 1958.

B) The Claimant acknowledged that the above statements were true.

Subsequently, the Claimant not only repudiated the above statements but also gave testimony that was diametrically opposed to the statements, *supra*.

It is significant that nowhere in the record has the Organization denied that the Claimant made false statements. In fact the Organization, in the following sentence:

"We feel that any mis-statements made by Carman Schimpf were instigated or condoned by the Claim Agent * * * in order to get more favorable statements for the defense of the Carrier."

is openly admitting that the Claimant made "mis-statements".

An intensive and objective analysis of the record fails to support the Organization's claim that Carrier Representatives tried to obtain from the Claimant "favorable statements for the defense of the Carrier". Neither can we conclude that the Carrier acted in an arbitrary and capricious manner in dismissing the Claimant from its service on September 28, 1961.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4684

In view of the confused findings of the majority it seems advisable to review the record involved.

The so-called hearing conducted on October 15, 1958 was in reality an investigation of the circumstances attending the injuries sustained by Messrs. Boop and Musto. A reading of the record discloses that the questions were worded in such a way as to free the carrier of any liability instead of trying to correct a situation so that such accidents would not happen in the future.

It is most significant that no charge was placed against claimant following the so-called hearing and that it was not until the case went to court some two years later, and the claimant testified under oath, that the carrier subsequently discharged him for allegedly furnishing false information. During the court proceeding Foreman Weathers in testifying for the carrier (see page 51 of Carrier's Exhibit B) stated that blue signal instructions had been changed at least three times — once prior to October 15, 1958 and twice after that date. These unilateral changes were made in spite of the fact that the clear and precise language of Rule 147 of the controlling agreement prescribes that "Trains or cars being inspected or worked on by train yard men will be protected by blue flag by day and blue light by night, which will not be removed except by men who place same." This rule, negotiated July 1, 1921 and in effect since that date, supersedes any unilateral instructions issued by the carrier.

It is evident from the record that the claimant was unjustly dismissed from the service and should, under the terms of Rule 32, have been reinstated with his seniority rights unimpaired and compensated for all time lost.

E. J. McDermott

C. E. Bagwell

T. E. Losey

Robert E. Stenzinger

James B. Zink