Award No. 4718
Docket No. 4598
2-MP-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Car Inspector J. M. Pulliam, who was Local Chairman of the Carmen's Organization, was unjustly discharged on July 22, 1963, by his employer, the Missouri Pacific Railroad Company.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to reinstate Car Inspector (Local Chairman) J. M. Pulliam, compensate him for all time lost, with seniority rights unimpaired and adjustments made in all fringe benefits and/or vacation benefits which he would have accrued had he not been so unjustly dealt with and subsequently dismissed.

EMPLOYES' STATEMENT OF FACTS: Car Inspector J. M. Pulliam, hereinafter called the claimant, had been employed by the Missouri Pacific Railroad Company, hereinafter called the carrier, for twenty-two (22) years with a clear record.

Claimant was local chairman of the carmen at Little Rock, Arkansas, for eight (8) years prior to his discharge on July 22, 1963.

On March 23, 1963, Supt. J. W. Treadwell directed a letter to the claimant citing him for investigation. The investigation was held by Supt. Treadwell on July 9, 1963.

On July 22, 1963, Supt. Treadwell discharged the claimant from service.

Claim was filed with Supt. Treadwell by Local Chairman Claimant on September 17, 1963. Supt. Treadwell replied on September 21, 1963. The claim was handled and progressed on the property in accordance with the agreement, with all carrier Officers authorized to handle disputes,—all of whom refused to adjust it.

The Agreement of June 1, 1960, as subsequently amended, is controlling.

POSITION OF EMPLOYES: The carrier's charges against the claimant contain a general, rather than precise, allegation that the claimant at sometime

the profession in this country. **Legal Aid is not needed on claims of this sort** unless the amount involved is quite small or the prospect of recovery so slim that an attorney cannot be secured." **(Emphasis ours.)**

For the reasons which have been fully set forth in this submission there is no support whatsoever for the request that the claimant, J. M. Pulliam, be reinstated to carrier's service on any basis whatsoever, which must 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.

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

In our Award No. 1884 we sustained a discharge based upon conduct similar to that charged to the claimant in this case, so we are constrained to find that, if proven, the conduct charged affords a valid basis for dismissal. Awards of other divisions are consistent.

There was substantial evidence adduced at the investigation to support the charges against the claimant, so the fact that there was some conflict in the testimony does not warrant us in vacating the action of the carrier nor afford a valid basis for sustaining the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1965.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4718

The decision of the majority in Award 4718 was rendered without regard to the evidence in the case and was based solely upon the reasoning contained in Award No. 1884. The facts in the two cases are not the same and, since Award No. 1884 was issued, the United States Supreme Court has clearly held that the legal theory upon which that award was based is no longer valid. In the case of **Brotherhood of Railway Trainmen v. Commonwealth of Virginia,** October Term, 1963, the Supreme Court said:

"* * * injured workers or their families often fall prey on the one hand to persuasive claim adjusters eager to gain a cheap and quick settlement for their railroad employers, or on the other hand to lawyers either not competent to try these law suits against the able and experienced railroad counsel or who are willing to settle the case for a quick dollar.

* * *

"The right of the members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel.

* * *

"and the right of the workers personally, or through a special department of their Brotherhood, to advise concerning the need for legal assistance and most importantly **what lawyers a member could confidently rely on,** is an inseparable part of this constitutional right to assist and advise each other."

Award No. 1884 held to the contrary and was based on the theory that all the union representative could do was answer queries from injured employees "concerning the availability of independent counsel" but "could not take affirmative action in the respect and in behalf of particular attorneys". Yet the majority, without reference to the law as enunciated by the Supreme Court blindly followed Award No. 1884 which placed limitations on the activities of union representatives not contemplated by the decision in the **Trainmens case.**

The record before this Division fails to show that the claimant acted in any way inconsistent with his duties as a representative of his craft union in behalf of its members. There was no showing of personal gain to the claimant and no evidence that he was acting "on behalf of particular attorneys" in the sense that he was soliciting business for them rather than looking after the interests of the employees involved.

While the carrier contended that the claimant "is deeply involved in this heinous operation whereby non-resident attorneys prey upon the misfortunes and injuries of injured workers in violation of Cannon 27 of Professional Ethics of the American Bar Association" there was no proof of such charge and no evidence to support this intemperate and extravagant accusation. Significantly, the carrier attempted to justify its contention by citing portions of the brief filed by the American Bar Association in the Supreme Court in the **Trainmens** case. See Pages 81 and 82 of the carrier's submission to the Board. The majority apparently attached no significance to the fact that these arguments were rejected by the Supreme Court.

The record before us supports the contention of the claimant that he was engaged in nothing more than advising and counseling members of the union as to their rights in a manner approved by the highest court in the land.

We must dissent.

James B. Zink
E. J. McDermott
T. E. Losey
Robert E. Stenzinger
C. E. Bagwell