

**Award No. 4753**

**Docket No. 4686**

**2-C&O-MA-'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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY  
(SOUTHERN REGION)**

**DISPUTE: CLAIM OF EMPLOYEES:** 1—That under the current agreement Machinist Walter E. Edwards was unjustly discharged from service June 17, 1963.

2—That accordingly the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and compensated for all time lost retroactive to June 17, 1963.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist Edwards, hereinafter referred to as the claimant was employed by the Chesapeake & Ohio Railroad, hereinafter referred to as the carrier, for a period of approximately 14 years, at the car shops, Raceland, Kentucky. The carrier, represented by Mr. W. O. Bradley, shop superintendent, car shops, Raceland, Kentucky, allegedly claims to have notified the claimant to appear for investigation to be held at 11:00 a.m., on June 4, 1963, on charges of being intoxicated during the third shift, May 25, 1963, and being absent without making report as to the reason for his absence, third shift, May 26, 1963.

On May 25, 1963, claimant was regularly assigned to the third shift 11:00 p.m. to 7:00 a.m., Monday through Friday in the Raceland, Kentucky wheel shop; rest days Saturday and Sunday. Owing to a backlog of work in the wheel shop, claimant had been asked to work his assigned rest days. Claimant did report for duty on his assigned rest day at 11:00 p.m., Saturday, May 25, 1963 and worked until 2:00 a.m. on the morning of May 26, 1963, at which time he told his foreman, Mr. E. V. Porter, he was sick and would have to check out. According to his foreman, Mr. E. V. Porter's statement, he released the claimant at 2:00 a.m., on the morning of May 26, 1963 on account of being sick.

The claim is without merit on all counts, and a denial award should be rendered.  
**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 employes contend that there was no proof of notice to claimant of the hearing. It was shown that a certified letter notice was mailed on May 27, 1963. Also it appears that claimants' representatives at the hearing had no information relative to his failure to appear and while they asked if there would "be a possibility of postponing this investigation" they advanced no reason for so doing. Further it appears that the claimant did not report back for work or advise the carrier of any reason for not doing so after May 25, 1963. Thus it is clear that, if claimant was without actual written notice of the hearing, he alone was responsible therefore.

With respect to the merits there was substantial evidence adduced at the hearing to support the charges and the employes are simply attempting to have this Board evaluate the evidence differently than did the Carrier's hearing officer. Under these circumstances we can only affirm his decision.

### **A W A R D**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1965.