

**Award No. 4781  
Docket No. 4696  
2-CUT-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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Carmen)**

**THE CINCINNATI UNION TERMINAL COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement, The Cincinnati Union Terminal Company unjustly dismissed Carman T. B. McGuire at the expiration of his assignment, August 21, 1963.

2. That accordingly the Cincinnati Union Terminal Company be ordered to:

- a) Reinstatement this employee in the service with all of his seniority and service rights intact.
- b) Compensate this employee for the loss of wages retroactive to the aforesaid date.

**EMPLOYEES' STATEMENT OF FACTS:** Carman T. B. McGuire, hereinafter referred to as the claimant, was employed as such on October 25, 1949 by The Cincinnati Union Terminal Company, hereinafter referred to as the carrier, and since then the claimant continuously maintained seniority service rights until dismissed from the service at the close of his tour of duty August 21, 1963.

Claimant's assigned hours of service were 11:00 P.M. to 7:00 A.M. Wednesday through Sunday, with rest days of Monday and Tuesday.

On July 30, 1963, a notice was sent to the claimant, notifying him:

"report to the Master Mechanic's office Wednesday, August 7, 1963, to determine facts and fix your responsibility for your failure to renew seven brake shoes on B&O Car 636 which were below condemning limits, which caused a 12 minute delay to B&O Train No. 12 on its departure from the Cincinnati Union Terminal on July 27, 1963."

"Third, the question of excessive punishment. In reviewing the sanction imposed we note that the offense is most serious. It is capable of producing tremendous damage. In view of this we are constrained to hold that legal justification exists for the penalty of dismissal and that it is not shown to have been motivated by ill will. Since there is a basis in reason for the extreme sanction of dismissal, it is not within our province to void it as an arbitrary exercise of power. The fact that we might have imposed less punishment in the light of Stewart's good record of 15 years does not furnish a basis for reversal.

#### AWARD

Claim denied."

Where, as here, a claimant has had prior discipline for the same or a similar offense, the board has taken this fact into consideration as they did in Second Division Award No. 3267 where it said:

"The Carrier has the primary right to weigh and evaluate the testimony, and if its finding is reasonably supported, this Division is loathe to disturb that finding. Awards 1109 and 2207.

In view of the attitude of Mr. Collins and the fact that he had been twice before disciplined by his company, once for disobedience of an order, and upon the testimony supporting the charges, we cannot hold that the finding of the Carrier or the discharge of Mr. Collins was not justified.

#### AWARD

Claim denied."

For the reasons set forth heretofore there is no rule support or basis for the request that claimant be reinstated, and we respectfully request that this Board deny the claim 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 waived right of appearance at hearing thereon.

The claimant was admittedly guilty of a serious offense when he forgot to work on a car for a passenger train needing renewal of brake shoes. This might have caused a serious accident. While claimant's prior discipline is a little remote, the items were for similar neglect of duty. Thus there is support for the decision of the Carrier, so it was not an arbitrary action, and we should not substitute our judgment for that of the Carrier.

## AWARD

Claim denied.

### NATIONAL RAILROAD ADJUSTMENT BOARD By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October, 1965.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 4781

The majority state that "The claimant was admittedly guilty of a serious offense when he forgot to work on a car for a passenger train needing renewal of brake shoes. This might have caused a serious accident." (Emphasis ours.)

The record discloses that the so-called "serious offense" referred to by the majority caused only a 12 minute delay in the departure time of B&O Train No. 12.

It will be noted from the carrier's notice to the claimant, dated July 30, 1963, to appear for investigation August 7, 1963, reading as follows:

"report to the Master Mechanic's office Wednesday, August 7, 1963, to determine facts and fix your responsibility for your failure to renew seven brake shoes on B&O Car 636 which were below condemning limits, which caused a 12 minute delay to B&O Train No. 12 on its departure from the Cincinnati Union Terminal on July 27, 1963."

only charged the claimant with causing a 12 minute delay in train departure. However, the majority ignored the evidence in the record and based their decision upon what might have happened. Therefore, since the claimant was only charged with causing a 12 minute delay in train departure, his dismissal for such an offense, after fourteen years of service, was arbitrary and the award should have been in the affirmative.

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