

Award No. 4873

Docket No. 4819

2-C&O-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Richard R. Wheeler was unjustly dealt with when he was dismissed from the service of the Chesapeake and Ohio Railway Company, on March 5, 1964.

2. That accordingly, the Carrier be ordered to restore Carman Richard R. Wheeler to the service with seniority rights unimpaired and compensate him for all time lost commencing March 6, 1964 (eight (8) hours per day, five (5) days per week, plus all overtime accruing to his position); also, restore his hospitalization benefits for himself and dependents, his life insurance benefits and vacation rights, including the days held out of service to be considered as compensated service for earned vacation, account the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Richard R. Wheeler hereinafter referred to as the claimant, was regularly employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, in its yards at Richmond, Indiana as a car inspector with a work week of Monday through Friday, first shift, rest days Saturday and Sunday, with local understanding to protect the job on Saturday.

At Richmond, Indiana cars are inspected and light repairs are made. Under date of February 4, 1964 the Carrier's General Car Foreman, F. H. Porter addressed the following letter to the Claimant:

Mr. R. R. Wheeler
Car Inspector
Richmond, Indiana

"Peru, Indiana, February 4, 1964 k/d
File 117-1

Please attend investigation in the Agent's office at Richmond, Indiana, at 1:30 P.M. Tuesday, February 11, 1964.

Under these conditions the Carrier's action was justified, and Claimant should not be reinstated, to the detriment of another employe."

Also note Award 4042 (Daugherty) stating:

"It does not matter whether claimant's record was placed in the investigation transcript. Carrier was entirely within its rights in giving weight to said record at any time before making its final decision." (Emphasis ours).

The board has repeatedly held that it will not disturb the carrier discipline unless shown that the carrier was arbitrary, unreasonable or unjust. Exemplary is Second Division Award 3092 (Burke) in which it was stated:

"We think the language contained in Award 1692 of this Division is persuasive. The question then remains, was the penalty imposed excessive? This and other Divisions of the Board have often said that they would not substitute their judgment for that of the carrier unless its action in that respect can be said to be arbitrary, unreasonable, or unjust. The claim must be denied."

Also see Second Division Award 3430 (Murphy) which held:

"We do not feel that this Board should substitute its judgment for that of the carrier unless the evidence proves that the carrier assessed an unjust or discriminatory penalty. The evidence here does not support such a contention. The carrier has a right to expect its employes to observe the Rules and perform their work. Likewise when the carrier is assessing penalties they should take into consideration the entire service record of the employe, which could be their reason for the reinstatement of Mr. Clement. This discretion is vested in them and we may not set aside their judgment unless the evidence proves that they have abused this right. The record in this case does not so indicate."

Award 3700 (Carey) is interesting in that it involved a carman-oiler who was dismissed for failure to perform his duties properly and falsifying his work reports. The board held that:

"The record discloses that claimant was afforded a fair and impartial hearing; the evidence sustained the charge against him, and the penalty imposed was not excessive. We find no persuasive reason for disturbing the Carrier's judgment in this case."

In the instant case Wheeler was afforded a fair and impartial hearing. The evidence sustained the charge against him. In view of the seriousness of the offense and Wheeler's long history of serious offenses, the carrier's judgment should not be disturbed in this case.

The claim is without merit and it should 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Carman Richard R. Wheeler, employed at Richmond, Indiana requests reinstatement to his position, with pay for all lost time, together with restoration of his vacation rights, and for all Hospitalization and Life Insurance benefits.

Claimant is employed at Richmond, as Car Inspector. At this location Carrier also employs one laborer. They perform necessary maintenance service and inspection of equipment at Richmond and other nearby locations. The two employees work under the direct supervision of a General Foreman whose headquarters is at Peru, Indiana, a point approximately 100 miles from Richmond. The management has designated the Freight Agent as the ranking employee at Richmond, and who is supervisor for the handling of operations at this point. The Freight Agent also had a Clerk employed in his office, and under instructions claimant was required to report to the Freight Agent or his Clerk, when off duty, or desired time off for short periods.

On January 28, 1964 claimant desired to go off duty for a short period. He went to the Freight Agent's office but claims he was unable to find either the Agent or his Clerk present in the office. He then reported to the Yard Conductor, who the Organization contends is the ranking employee when the agent or his clerk are not available, and did take time off after allegedly receiving permission from the Yard Conductor. There is nothing in the Agreement or record here, to support such contention.

The Organization relies on Rules #21(A), #35 and #37, of the Agreement to support its contention that claimant had proper authority to take time off from his work.

Carrier contends that claimant left his position without first obtaining proper authority to take time off. That both the Agent and the Clerk were on duty, and that claimant made no effort to locate either person, but insisted he allegedly obtained permission from the Yard Conductor, who had no supervision over claimant, and Carrier vehemently denies the Yard Conductor had any authority to grant such permission to claimant, and further that the Yard Conductor has no designated authority as being next in command at Richmond when the Agent or his clerk are not available.

After reviewing the record the Division finds that claimant did leave his work without specific permission from the Freight Agent or his Clerk, as required by instructions of Carrier. From the record before us, Carrier furnished claimant a fair and impartial Investigation and Hearing, and based upon his record, Carrier has a right to consider the past record of an employee. This Division in previous dockets has so held Carrier in no way violated the Agreement as charged.

The claimant did violate the Agreement by his failure to obtain proper permission to be absent from his position for several hours. He has made no

showing that his absence was brought about by an emergency **requiring** him to absent himself.

The Carrier was justified in its action, and the claim should be denied.

AWARD

Claim denied as per the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1966.