

Award No. 5030

Docket No. 4912

2-CRI&P-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That under the controlling agreement, Carman Frank L. Hammond was unjustly dismissed from the service on July 29, 1964.

(2) That accordingly, the Carrier be ordered to restore Carman Hammond to service with all seniority and service rights unimpaired and compensate him for all time lost retroactive to July 29, 1964.

EMPLOYEES' STATEMENT OF FACTS: Carman Frank L. Hammond, hereinafter referred to as the claimant, had been employed since June 6, 1949 as a carman by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier, at the 49th Street Coach Shop, Chicago, Illinois.

On July 2, 1964 during the course of his regular duties of repairing passenger cars in the Chicago Coach Shop, the claimant exhausted the supply of round head bolts used to secure light fixtures in Car 330. Being unable to obtain the usual type of bolts he substituted flat head bolts to secure the light fixtures.

Coach Foreman Schonlis during an inspection of the progress of the work in Car 330 discovered the substitution of bolts in the light fixtures and criticized the claimant for the substitution. The claimant was not given an opportunity to explain why the substitution was made and he became upset and went home at 10:53 A. M.

On July 10, 1964 an investigation was held charging the claimant "for a reported violation of Rule "N", second paragraph and Rule "Q" as contained in Form G-147 Revised, because of your unwarranted, quarrelsome attitude and conduct at about 10:30 A. M. Day Light Saving Time July 2, 1964 at 49th Street Chicago Shops."

The claimant was discharged on July 29, 1964 for alleged violation of Rules N and Q

On the basis of the entire record an affirmative award is warranted.

AWARD: Claim sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 428

/s/ A. Langley Coffey
A. Langley Coffey
Neutral Member and Chairman

/s/ G. J. McGuire
G. J. McGuire
Carrier Member

/s/ W. R. Meyers
W. R. Meyers
Organization Member"

So it is clear the claimant did not suffer when he was represented in the hearing by his "duly authorized representative" as set forth in the rule. Therefore, the organization's position on that count is totally without merit. As an aside, it is difficult to determine how the claimant could have been more adequately represented because his duly authorized representative, local Chairman Krolak, was somewhat involved in and knew all the details concerning the incident.

The organization's third position about improper notice is really not understood. The notice clearly states the Hearing is being held to determine the facts and claimant's responsibility, if any, for a reported violation of Rules "N" and "Q", which are clearly the rules involved as covered by the capsulized description of his reportedly being quarrelsome, his reportedly insubordinate conduct and his reportedly improper conduct in walking off the job without permission.

There certainly was no question in the claimant's mind as to whether the notice was proper. On Page 2 of the transcript he was asked and answered:

"Q. Mr. Hammond did you receive proper notice to report to this hearing.

A. I did."

It is clear then that there is no merit to the organization's contention in this respect.

This particular case should not be before this board. The foreman made far over and above reasonable effort to settle this matter within the local family. The record shows the claimant simply would not do that, but chose instead to wilfully take action he knew was in violation of the rules. His situation is entirely of his own making. This claim 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 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 basic issue is whether or not Claimant's dismissal was improper.

The evidence, consisting of testimony by foreman Schnolis and two carmen, supports Carrier's finding that Claimant was insubordinate and absented himself without proper authority. It also establishes to our satisfaction that although there may have been provocation by the foreman to excuse Claimant's quarrelsome conduct, it was not sufficient to warrant walking off the job in defiance of orders and spurning two offers by the foreman to discuss the matter with the Local Chairman on the spot. The first such offer was made at the time of the incident and the second a short time later after the foreman had sent for the Local Chairman and Claimant had left his work and gone to the locker room.

Claimant was accorded a hearing which seems to have complied with principles laid down by the awards of this Board. He was given a fair opportunity to examine and cross examine witnesses and develop his case and we find no substance to Petitioner's contentions that he did not receive due notice of the specific charges against him or that Carrier prejudged his case. Claimant was ably represented by his local Chairman and under the circumstances of this case where little conflict exists as to critical testimony, no prejudicial error was committed by Carrier in limiting him to one representative.

Foreman Schnolis is to be commended for his prompt efforts to have the matter settled in an orderly manner. By the same token, Claimant was seriously in error and most unreasonable in rejecting these efforts and merits strong discipline. A suspension without pay for some thirty months would not appear to be capricious in this case but dismissal does constitute, in our opinion, an excessive and arbitrary penalty, particularly since Carrier merely administered a reprimand in the only other similar incident involving Claimant (other misconduct listed in his service record is not shown to have been established or punished and, in the absence of further information, amounts to nothing more than allegations or charges). The warning that any future "walking off the job" will result in dismissal was not given to Claimant until after the incident in question had taken place.

In view of the foregoing, we will direct Carrier to offer Claimant immediate reinstatement to the position he occupied at the time of his discharge but without back pay.

AWARD

Claimant reinstated with all seniority and vacation rights unimpaired but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1967.

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