Award No. 5162
Docket No. 4900
2-C&NW-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago & North Western Railway Company violated the collective agreement and unjustly treated Machinist Helper (Tractor Operator) Dean W. Hutton when it suspended him from service on Sept. 17, 1964, and discharged him from service on October 1, 1964.

2. That accordingly, the Chicago & North Western Railway Company be ordered to reinstate this employe with seniority rights unimpaired and compensate him at Machinist Helper pro rata rate of pay plus six percent (6%) interest for all wage earnings deprived of; also fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since Sept. 17, 1964, until restored to service.

EMPLOYES' STATEMENT OF FACTS: Mr. Dean W. Hutton, hereinafter referred to as the claimant, was employed as a machinist helper (tractor operator) by the Chicago and North Western Railway Company, hereinafter referred to as the carrier, at Clinton, Iowa.

The Car Shops Superintendent, Mr. R. E. Powers, suspended the claimant from service effective September 17, 1964. On September 18, 1964, Car Shops **Superintendent R. E. Powers charged the claimant** as follows:

"CHARGE: Your responsibility for conduct unbecoming an employe; and violation of safety rules while employed as a machinist helper operating the fork lift in the Wheel Shop on September 17, 1964, specifically your action of throwing tomatoes at Machinist D. L. Clark while he was engaged in performing his duties as a machinist operating the burnishing lathe, thereby endangering this man's safety and company property, resulting in your being removed from service September 17, 1964. You may be accompanied by one or more persons

upon which to base the finding of violation and we cannot hold it is unreasonable. The credibility of the witnesses and the weight to be given their testimony is determined by the hearing officer and in the absence of a showing his judgment was arbitrary or capricious it will not be disturbed. The mere fact a greater number of witnesses testified on one side of the issue to be determined than on the other is not of itself sufficient to warrant this Division to disturb the finding."

Therefore, there is no support for the claim for reinstatement and pay for time lost.

The "statement of claim," in addition to reinstatement with pay for time lost, also requests payment of "six percent (6%) interest for all wage earnings deprived of; also fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) * * *."

It will be noted that rule 35 of the federated crafts' agreement provides:

"35. No employe will be discharged for any cause without first being given an investigation.

In extreme cases, suspension pending a hearing, which shall be prompt, shall not be deemed a violation of this rule.

If it is found that charges are not sustained, such employe shall be returned to service and paid for all regular time lost."

Under this rule the claimant would be entitled only to time lost less earnings in outside employment (see Second Division Award No. 1638 involving the same rule and the same parties), if he were entitled to reinstatement, which he is not. It will be noted that the rule makes no provision for payment of six percent interest or the fringe benefits referred to in the "statement of claim." In this respect, the claim in this case constitutes in part a request for a new rule, which is beyond the jurisdiction of this board. The board's authority is limited to interpretation of existing rules, and does not extend to promulgating new rules under the guise of interpretation of existing rules. See Second Division Award No. 3883.

The claim in this case is barred by the release of April 1, 1965. Even if the claim were not barred, it would be without merit and should be denied.

(Exhibits not reproduced.)

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 resigned as an employe of the Carrier on April 1, 1965 after he had thrown tomatoes at Machinist D. L. Clark.

The Claimant also released the Carrier of all possible legal claims he had or might have against 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 28th day of April, 1967.

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