



Award No. 5185
Docket No. 4965
2-WT-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 106, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1—That under the current agreement, Car Cleaner, Floyd C. Lowery, was discriminated against and unjustly suspended from the service for a period of Three (3) days, April 14, 15 and 16, 1965.

2—That accordingly, Floyd C. Lowery is entitled to be compensated for all time lost as the result of the three day suspension.

EMPLOYEES' STATEMENT OF FACTS: Floyd C. Lowery, hereinafter referred to as the claimant is employed as a Car Cleaner with the Washington Terminal Company hereinafter referred to as the Carrier. On October 5, 1964 the Carrier's Assistant Master Mechanic, Mr. Burton, served notice to the claimant that he was notified to appear in the office of the Master Mechanic, Room 205 Union Station, Monday, October 12, 1964, 8:00 A. M. E.S.T. for a hearing being charged with "Losing excessive time from work during July, August and September, 1964," a copy of which is herewith attached and designated Exhibit (A). Hearing was postponed by mutual agreement until October 30, 1964. The hearing was held as scheduled and a copy of the transcript of hearing is herewith attached and designated Exhibit (B). On December 10, 1964 the Carrier's Master Mechanic, Mr. J. E. McCabe notified the Claimant that he had been found guilty as charged and that he was suspended for a period of three (3) days for losing excessive time from work during July, August and September, 1964, copy attached and designated Exhibit (C). The Claimant's case has been handled in accordance with the collective controlling agreement effective June 16, 1946, up to and including the highest designated Officer of the Carrier to whom such matters are subject to appeal, with the result that said Officer on more than one occasion has declined to adjust this dispute, which is affirmed by copies of letters submitted herewith and designated Exhibits; (D) dated December 16, 1964, Exhibit (E) dated December 18, 1964. Exhibit (F) dated February 18, 1965, Exhibit (G) dated March 2, 1965, Exhibit (H) dated April 16, 1965, Exhibit (I) dated May 5, 1965 and Exhibit (J) dated May 19, 1965.

The agreement effective June 16, 1946, as subsequently amended is controlling.

Oral hearing is waived unless requested by the Organization.

(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 employees 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.

Claimant Floyd C. Lowery, a Car Cleaner, was charged with "Losing excessive time from work during July, August and September, 1964." A hearing was held October 30, 1964, at commencement of which Claimant was asked:

"Q. Are you guilty or not guilty of the foregoing charge?

A. Yes sir, guilty."

At the conclusion of the hearing, Claimant was "found guilty as charged" and by way of discipline was suspended for a period of three (3) days.

Thereafter, this claim was filed by Employees charging that Claimant was discriminated against and unjustly suspended from the service and asking that he be compensated for all time lost as the result of the three-day suspension.

At the hearing, Claimant's work record as to time absent from duty was read to him and he stated that according to his recollection it was "about the way it was." Said record, covering a five-day week, showed Claimant as having worked in July eleven days, in August two days and in September five days.

Claimant testified that he was troubled with an inoperable ulcer which frequently made him too miserable to work. He gave his doctor's name and address, stated he had been under doctor's care during the months covered by the charge being heard, but he did not call his own doctor as a witness nor did he supply a written statement from a doctor concerning his condition or the treatment undergone therefor during the three months in question, despite having had ample time before the hearing to obtain such or other like evidence. His was the burden but he did not bring to the hearing evidence in his own defense to show that he had been unavoidably detained from work because of serious illness and that he had not absented himself an excessive number of times without proper cause. (See Second Division Awards 2618, 4226 and 3874.)

From a careful review of the record before us we find that claimant was given a fair and impartial hearing. Further, as said in Second Division Award 4101:

"We have consistently held that a disciplinary penalty imposed upon an employe can successfully be challenged before this Board

only on the ground that it was arbitrary, capricious, discriminatory, excessive, or an abuse of managerial discretion. See: Awards 3874 and 4000 of the Second Division. We are satisfied that the Claimant's five-day suspension was not founded upon any of such untenable bases."

Likewise in the instant case we so hold as to the unquestionably lenient discipline of a three-day suspension. Therefore, the claim here cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.