



**Award No. 5229**

**Docket No. 5096**

**2-NYC-FO-'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.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

**NEW YORK CENTRAL RAILROAD COMPANY  
(Southern District)**

**DISPUTE: CLAIM OF EMPLOYEES:**

That the carrier violated the provisions of the current agreement particularly Rule 24(f) when they removed Motor Truck and Tractor Operator Donald E. Berry from the service on April 10, 1965, without a proper hearing, and unjustly discharged him on June 3, 1965.

That accordingly, carrier be ordered to restore the aforesaid employe to the service and compensate him for all wage loss, with seniority, vacation, health and welfare and life insurance rights unimpaired, account the aforesaid violation.

**EMPLOYEES' STATEMENT OF FACTS:** Motor Truck and Tractor Operator, Donald E. Berry, hereinafter referred to as the claimant, was regularly employed by the New York Central Railroad Co., hereinafter referred to as the carrier, in its Car Repair facility at West Columbus, Ohio on the 7:00 A. M. to 3:30 P. M. shift five days per week.

Claimant was regularly assigned to operate the Hough Payloader on the repair track which in addition to other uses is used to move and spot cars on the repair track. On April 10, 1965 at approximately 1:00 P. M. Foreman S. A. Rupe advised claimant that they were ready to make a move and accordingly, claimant proceeded to make ready to move the cars. Upon receipt of verbal (yelling) instructions from the Foreman, claimant proceeded to move the cars in accordance with practice established at the point to move cars under verbal orders from the Foreman or Car Repairman. While moving the cars an accident occurred about 1:10 P. M., injuring Carman Frank Archer. Subsequent to the accident claimant was removed from the service by Foreman James DeStazio without benefit of a proper hearing or a precise charge being placed against him.

Subsequent to the accident and on April 13, 1965, Carrier's General Foreman G. F. Hauth, issued a Bulletin to Foremen, J. DeStazio, S. A. Rupe and

taken by the Carrier with the Claimant for his improper conduct on April 10, 1965, nor was its action capricious, unreasonable or unjust.

The Carrier submits the Claimant's dismissal was fully justified by the facts of record and the claim is without merit and should be denied.

All facts and arguments presented herein have been made known to the Employees either orally or by correspondence in the handling of the claim on the property.

An oral hearing is requested; unless after reviewing Employees' Submission, Carrier decides to waive hearing.

(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 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.

The present claim disputes the propriety of Claimant's suspension on April 12, 1965, and dismissal on June 3, 1965.

Claimant, a motor truck operator, was involved in an accident on April 10, 1965, while operating a tractor used in moving cars. As a result of the accident, another carman, Frank Archer, sustained serious injuries. After a hearing had been held in the matter, Carrier found that Claimant was negligent and that his negligence caused the accident.

The record discloses no prejudicial defect in the conduct of the hearing or in procedure. Claimant appears to have been well represented and to have had fair opportunity to examine and cross examine witnesses and to present his case. Contrary to Petitioner's contention, we find that the notice of hearing received by Claimant was adequate. See Awards 2112 and 4747. It specified the time, date and place of both the hearing and the accident and advised Claimant as well as the three other employees to whom it was addressed that the purpose of the hearing was "to develop the facts and to determine your responsibility, if any, regarding to injury to Mr. F. Archer." There is no showing that Claimant was misled or confused by the notice or was denied a fair opportunity to prepare his case.

In accordance with well established principles of the Board, we will not disturb Carrier's findings as to Claimant's negligence since they are supported by substantial credible, though controverted, evidence and the hearing is free from material error. See Fourth Division Award 2055 and awards therein cited.

Turning now to the disciplinary measures, we do not find that Carrier acted improperly in suspending Claimant before the facts relating to the accident were investigated. It was not unreasonable under the circumstances for Carrier to be concerned about safety and the record shows that it made all due efforts to hold a prompt hearing in the case.

While in considering the final question, the matter of Claimant's dismissal, we appreciate the gravity of a negligence case involving serious injury and the tremendous responsibility for safety of personnel and property that management shoulders in the railroad industry, the interests of the individual employe must also be respected and given weight. Claimant has a record of over fifteen years service without, so far as the evidence shows, any other chargeable accident or blemish.

In view of his record, we are constrained to find Claimant's dismissal excessive and to direct Carrier to reinstate him to the position he occupied immediately prior to the accident of April 10, 1965, or to a substantially equivalent position, with seniority and vacation rights unimpaired but without back pay or health, welfare and life insurance benefits for the period during which he was withheld from service.

#### AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1967.