

Award No. 5389

Docket No. 5501

2-B&O-MA-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement the Baltimore and Ohio Railroad Company unjustly restricted from service as a Equipment Repairman P. Bogle (Machinist), from the date of June 21, 1966.

2. That accordingly the Baltimore and Ohio Railroad Company be ordered to reinstate Equipment Repairman P. Bogle (Machinist), to his former position, compensate him for time lost from June 21, 1966 until he is reinstated, as well as make whole with respect to his vacation rights, his rights under the Hospital, Medical and Surgical plan and group life insurance as well as the removal of reprimand assessed by the Division Engineer on his service record.

EMPLOYEES' STATEMENT OF FACTS: Machinist P. Bogle, hereinafter called the claimant, has a service date with the Baltimore and Ohio Railroad, hereinafter called the Carrier, starting March 8, 1937 when he was hired as a Machinist Apprentice at Du Bois, Pa. After completing his apprenticeship he was hired as a Machinist. During times that he was laid off as Machinist he worked for the carrier as a carman helper and carman mechanic. His name correctly appears on the latest Machinist Seniority Roster, which is January 1, 1967, (as well as the Seniority Rosters for preceeding years) as having a seniority date of June 13, 1943. Copies of the Seniority Rosters beginning January 1, 1964, through January 1, 1967 are attached to the back of the submission as Exhibits F-1 through F-4. Your Board will note that claimant Bogle has advanced from number 35 on the 1964 roster to number 24 on the 1967 roster.

On April 11, 1966, the Claimant held a machinist position and was engaged in repairing Surface Unit Equipment between Kane and Mt. Jewett, Pennsylvania. He completed work on unit BD 304-K during lunch hour and made two trips with his tools and spare parts approximately two hundred and fifty (250) feet to his repair truck, cleaned his hands as best he could then ate his dinner. Equipment PB-402-T, which needed the completion of repairs from a previous breakdown was coming from the opposite direction and claimant was on the lookout for its arrival. This equipment was to work its way directly in front of where the claimant had parked his repair truck. At 12:45 P. M. Division Engineer F. Bailey was driving south on U. S. Route 219 and saw claimant's

"No employe shall be disciplined without a fair hearing by designated officers of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and the duly authorized committee will be apprized of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for his net wage loss, if any, resulting from said suspension or dismissal.

Stenographic report will be taken of all hearings or investigations under Rules 32, 33 and 34, and the employe involved and the duly authorized committee shall each be furnished with one copy."

In this case the petitioner was afforded a fair hearing by designated officer of the Carrier. He was apprized of the precise charge made against him. He was represented by counsel of his choosing. There was no prejudgment of any sort as to the petitioner's responsibility. In this case, the petitioner was granted his full and proper rights and privileges under application of Rule 32 of the Working Agreement. There was no impropriety about the investigation procedure. There was no impropriety as to the conduct of the investigation. It is not now subject to challenge.

In a word, the Carrier submits that the petitioner was given a fair and impartial hearing and that the discipline rule in the Agreement was properly complied with in the petitioner's case.

CARRIER'S SUMMARY: In the instant case in assessing discipline the Carrier was confronted with direct evidence indicating that the petitioner had been negligent in the performance of his duties on the date in question. The same situation had been true in several past occasions. It was simply apparent that the petitioner could not be permitted to continue to perform duty in that capacity. The claimant's request and claim ought to be denied. Oral hearing requested.

(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 were given due notice of hearing thereon.

Machinist Percy E. Bogle, hereinafter called the claimant, was employed by the Baltimore and Ohio Railroad Company, hereinafter called the Carrier, as a Machinist Apprentice. Upon completion of his indenture as a Machinist, the record indicates more than 29 years of service prior to his being withheld from service (restricted from his position as Maintenance Equipment Repairman).

In a notice dated April 13, 1966, the claimant was charged with "alleged failure to properly maintain surface unit No. 5 between Kane and Mt. Jewett, Pennsylvania, April 11, 1966", and asked to appear at a hearing April 18, 1966. After completion of hearing, the Carrier under date of May 23, and 24, 1966, presented the claimant with a notice restricting him from duty as Maintenance of Equipment Repairman in the Maintenance of Way Department.

Commencing on June 1, 1966, on through the 20th of June, the claimant took his earned vacation. Upon returning to work on June 21, 1966, claimant attempted to return to work as a Maintenance Equipment Repairman in the Maintenance of Way Department or in the Mechanical Department but was not permitted to do so.

In brief, the Division finds that the record does not contain substantial evidence to uphold Carrier's contention that the claimant failed to maintain surface unit No. 5 between Kane and Mt. Jewett, Pa., on April 11, 1966. In analyzing the evidence in support of Carrier's charge, we note that it basically stems from the testimony of Carrier's supervisors and equipment operators, attesting to a breakdown to unit No. 5 on or about the lunch period time on the above date in question. The claimant had to be informed of the breakdown by the machine operator and division foreman.

This Division is unable to conclude that there is substantial evidence to support the charge of "failure to properly maintain this surface unit." However, the same analysis of the record discloses a degree of evidence that the claimant did not give his exclusive attention to his duties during a period of time when he should have expected his services to be needed (during the lunch period of the Equipment Operators). See Transcript of Investigation.

In support of the claimant in his "employment history record" with the instant Carrier (see Employes' Exhibit D-1, four pages). The record starts as a Machinist apprentice, March 8, 1937. It carries on through the claimant's Machinist career up to and including June 20, 1966. The record indicates that the only mark of criticism or reprimand against the claimant is the occurrence on 4/11/66, restricted from work as Equipment Repairman in Engineering Department (Form 703-F) — an unblemished record of 29 years.

Finally, even though the evidence against the claimant was sufficient for the Carrier to conclude that the claimant was responsible for his failure to give exclusive attention to his work during a period when it is customarily commensurate to the service requirements to expect emergency service repairs to maintenance of roadway equipment, the inconclusiveness of the evidence against the claimant must be considered along with his clear 29 year record of employment with this Carrier when determining the penalty to be assessed. This Division is cognizant of previous awards which found that what is a proper penalty when the evidence is clear may not be proper when the evidence is debatable.

This Division finds that the discipline imposed upon the claimant is too severe and incommensurate with the offense.

The record shows that the Carrier has held claimant out of service from June 21, 1966, to the date of this award, which is approximately a total of 21 months. The Division finds that an appropriate remedy in light of all the facts analyzed in the record is that being withheld from service from June 21, 1966 through March 21, 1967 is punishment enough. The claimant is en-

titled to reinstatement to his former position, if seniority permits, and paid for all time lost, if any, from March 22, 1967, until returned to work with seniority and vacation rights unimpaired and removal of notes or reprimand assessed from his personnel record.

AWARD

Part 1 — Sustained. Part 2 — Sustained as modified in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1968.