Award No. 5399
Docket No. 5288
2-L&N-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 91 RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1 — That under the provisions of the current Agreement, Car Inspector, H. L. Jackson, was unjustly dismissed from service on April 26, 1965, and

2 — Accordingly, the Louisville and Nashville Railroad should be ordered to —

(a) Restore him to service with seniority rights unimpaired,

(b) Compensate him for all time lost as a result of his dismissal, and

(c) Pay all premiums for his hospital, surgical, medical and group life insurance benefits for the entire time he is withheld from service.

EMPLOYES' STATEMENT OF FACTS: Car Inspector, H. L. Jackson, hereinafter referred to as the Claimant, was employed as a Carman Helper at Nashville, Tennessee on August 13, 1945 by the Louisville and Nashville Railroad, referred to hereinafter as the Carrier. He was upgraded to fill a Carman's position on July 9, 1951 and after working the required number of days in an upgraded capacity, established seniority as a carman on February 24, 1957. Subsequent to that date, he continued working as a carman and was assigned to a car inspector's position at the time of his dismissal.

On April 7, 1965, an investigation was held in the Master Mechanic's office at Nashville in connection with charges that the Claimant was "under the influence of intoxicants while on duty between the hours of 11:00 P. M., March 18, and 12:50 A. M., March 19, in Radnor Department Yard". A copy of the transcript of the investigation is attached hereto and identified as Exhibit A. As a result of the investigation, the Claimant was dismissed from the Company's services on April 26, 1965.

In addition to the above, on August 2, 1966, claimant Jackson made request of the Master Mechanic for permission to come on company premises and talk to Local Chairman DeBusk during his lunch hour concerning handling of his case. Such permission was granted him, and during the course of the conversation claimant Jackson made a completely unwarranted and unprovoked physical attack on Local Chairman DeBusk, necessitating medical attention and resulting in Mr. DeBusk losing three days' work. For details concerning that incident, please see Carrier's Exhibit "CC". Carman Jackson having conclusively shown that he is not the type of individual carrier desires to have in its employe, the General Chairman was informed in conference on August 16, 1966, that no further consideration would be given to restoring him to its services as a matter of leniency and reaffirmed declination of the claim for his reinstatement with pay for time lost.

CONCLUSION: In conclusion carrier reiterates that it complied strictly with the applicable rule in taking disciplinary action against claimant Jackson and that his rights were fully protected. He was afforded a fair and impartial investigation at which he was ably represented by his duly accredited representatives. While denied by him, there is substantial and convincing evidence in the record in support of the fact that he was on duty under the influence of intoxicants, as charged. In view of the seriousness of the offense, and his prior record, carrier did not abuse its discretion or violated the agreement in removing him from its service. To the contrary, his dismissal was fully justified and the claim for reinstatement with pay for time lost should be denied in its entirety.

> "* * * It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's indisciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed. (Second Division Award 1323)
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> A dismisal for cause terminates the employment relationship and the dismissed employe has no enforceable right to be reinstated or rehired by the employer. Reinstatement or rehire of a former employe dismissed from service is within the discretion of the employer. In the absence of any enforceable right to reinstatement there is no basis for this time claim." (First Division Award 14421)

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employes, either in conference or correspondence.

(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.

On March 18, 1965 the claimant reported for duty as a car inspector at Eleven o'clock P. M. Within an hour the foreman was informed by a fellow employe that the claimant, "Wasn't acting just right". The claimant was informed to report to the office as a report had been made that he wasn't acting just right. The claimant instead went to the locker room and was changing his clothes preparing to go home, informing the foreman and others that he was sick. Conversation took place at this time between the forman and claimant in which the latter failed to cooperate and explain his condition in detail. At the termination of the conversation the claimant left the property and went home contending he was sick. Prior to the interview and while the claimant was in the yard, a fellow worker was performing the claimant's work until the fellow worker informed the claimant that he was wanted by the foreman. Subsequently, the claimant was charged with, "being under the influence of intoxicants while on duty between the hours of 11:00 P. M., March 18, and 12:50 A.M., March 19, in Radnor Departure Yard".

An examination of the record fails to reveal that the claimant acted in a normal manner for the following reasons: 1. He failed to report his illness and seek medical attention, 2. He permitted fellow employes to perform work he was responsible for, 3. He failed to cooperate with the foreman both by not reporting into the office and during the interview in the locker room, 4. The incident arose from a report by a fellow employe that the claimant was not acting right. An indication that something was wrong with the Claimant. After a careful examination of the record we are of the opinion that no evidence exists to set aside the determination.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1968.

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