



Award No. 5610

Docket No. 5463

2-IC-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, J. D. Duncan, Car Oiler, was unjustly dismissed from service by letter dated December 20, 1965.

2. That accordingly the Illinois Central Railroad be ordered to reinstate Car Oiler J. D. Duncan to service with accumulated seniority rights unimpaired, compensate claimant for all time lost, vacation rights unimpaired, hospitalization for himself and dependents, and any other rights he might have received had he not been unjustly held from service coming under the Agreement between System Federation No. 99 and the Illinois Central Railroad.

EMPLOYEES' STATEMENT OF FACTS: Car Oiler J. D. Duncan, hereinafter referred to as the Claimant, entered the service of the Illinois Central Railroad, hereinafter referred to as the Carrier, in the year 1952. At the time of the incident giving rise to the instant claim, Claimant was regularly employed by Carrier as a Car Oiler, Paducah, Kentucky with assigned hours of 3:00 P. M. to 11:00 P. M.

On December 3, 1965, Carrier's Master Mechanic H. B. Herrin, addressed the following letter to Claimant:

"Paducah, Kentucky
December 3, 1965

Mr. J. D. Duncan
Route 2
Benton, Kentucky

Dear Sir:

Please arrange to attend an investigation at 9:00 A. M., December 7, 1965, in the office of general car foreman, at Paducah, Ken-

SUMMARY AND CONCLUSION

When there is a conflict in evidence, as in this case, it is not for the Board to resolve the conflict. Truly, the hearing officer is the only man in a position to weigh the evidence properly and draw conclusions. As the Adjustment Board has said, where the record contains substantial evidence in support of the company's findings, the Board has no right to reverse or modify them. Clearly, Mr. Collins' testimony and the testimony of company supervisors is substantial evidence in support of the conclusion that the claimant is guilty.

Dismissal, indeed, was the only penalty that could have been assessed in the circumstances. The claimant had been dismissed for dishonesty before and reinstated on a leniency basis. To assess a lesser penalty, particularly in view of Duncan's subsequent conviction for theft, would in effect condone dishonesty.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, find 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.

A review of the transcript of the evidence produced at the investigation in this case leads this Division to the conclusion that the discipline assessed by the Carrier was warranted.

Claimant was discharged previously for the same offense and was reinstated with the understanding the leniency would not be exercised again.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1968.