



Award No. 5794

Docket No. 5637

2-CB&Q-CM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT, AFL — CIO
(Carmen)**

CHICAGO, BURLINGTON AND QUINCY RAILROAD CO.

DISPUTE: CLAIM OF EMPLOYEES:

1. The Chicago, Burlington & Quincy Railroad Company unjustly dismissed Carman Carl A. Skipton, Council Bluffs, Iowa, from service and deprived him of his service rights from March 17, 1967 to and including October 9, 1967.
2. That accordingly, the Chicago, Burlington & Quincy Railroad Company be ordered to compensate Carl A. Skipton from March 17, 1967 through October 9, 1967; make him whole for all vacation rights; pay the premiums for Hospital, Surgical and Medical benefits for all time held out of service, and pay the premiums for Group Life Insurance for all time held out of service.

EMPLOYEES' STATEMENT OF FACTS: Carman Carl A. Skipton, hereinafter referred to as the claimant, has been employed by the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, for approximately twenty five (25) years, and has worked as an interchange car inspector at Council Bluffs, Iowa for approximately fifteen (15) years.

Council Bluffs, Iowa is located directly east of Omaha, Nebraska, with only the Missouri river separating the two cities.

On March 17, 1967 the claimant was the only car inspector working on the third shift, 12 Midnight to 8:00 A.M. The claimants assignment was Sunday through Thursday, with Friday and Saturday as assigned rest days. He worked Sunday, Monday and Tuesday from 4:00 P.M. to 12 Midnight, Wednesday and Thursday from 12 Midnight to 8 A.M.

On March 17, 1967 the claimant was handed the following dismissal notice:

"This is to notify you that effective this date you are hereby dismissed from the service of the Chicago, Burlington & Quincy Railroad Company for your being found loitering in the cab of engine 9310 at about 2:10 A.M. until about 3:35 A.M. and again at

the issuance of a citation or warrant of arrest. The Manager had no personal knowledge of the occurrence, and did not testify. This instance is not analogous to a hearing in which the presiding officer has occasion to consider his own testimony or credibility."

Referee Angus Minro in First Division Award 14965 held:

"Petitioner next alleged the same individual drew and heard the charge to his prejudice. Regardless of our view on the subject, it is well settled by numerous awards in the absence of a schedule prohibition the same person may be both prosecutor and hearing officer. The record simply does not reveal how such act prejudiced the rights of Petitioner."

In our case, the organization has made a blanket charge against Master Mechanic Poindexter. They accuse Master Mechanic Poindexter of being unjust and prejudicial in conducting the investigation of April 14. They do not, however, specify in what manner or what ways Master Mechanic Poindexter acted with prejudice toward the claimant. The carrier requests that this Board simply overlook this allegation by the organization as unfounded.

Rule C of the general notice of the Burlington Lines' Code of Safety Rules reads:

"The service demands the faithful, intelligent and courteous discharge of duty."

In this case, we have a carman who, for all practical purposes performed no constructive work for better than 2 1/2 hours one night. He relies upon some rather loosely given instructions which were rather unspecific in nature. These instructions essentially keeping him, unfortunately, in a state of inactivity. He doesn't question these terribly convenient "orders" nor does he make any attempt to do any work or to seek any other direction from his supervisors during this period of imposed inactivity. The carrier feels that this was a very unfaithful, and unintelligent way for Carman Skipton to discharge his duty. By so doing, Carman Skipton, if nothing else, violated the above forementioned rule..

In summary, the carrier would like to reiterate the main points of its case:

1. The Claimant in this case was afforded a fair and impartial investigation as provided for in accordance with Rule 31 of the current agreement.
2. That the testimony derived from this investigation substantiated the charges brought against the Claimant.
3. That the discipline assessed in view of the charges against the Claimant was not unreasonable.
4. That the subsequent reinstatement of the Claimant without pay for all time lost was strictly a matter of Management leniency, and that the Claimant has no justification whatsoever for back pay.

In view of all of the preceding, this claim must be denied.

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 waived right of appearance at hearing thereon.

Claimant, a car Inspector, was dismissed from Carrier's service on March 10, 1967, after having been charged with and found guilty of loitering on the job and falsifying information on his daily time slip dated March 16, 1967. On March 20, 1967, the claimant requested an investigation under Rule 31 of the Agreement in evidence. It was set for April 4 at 10 A.M. but was postponed until April 11, 1967, and again on that date because of the Carrier's stated position that the representative of the Claimant at those proceedings was not a "duly authorized representative". Finally on April 14, 1967, the formal investigation was held. Transcript of the testimony there adduced is in evidence.

On October 10, 1967, the Carrier restored claimant to service with seniority rights unimpaired but without compensation for time lost, and without prejudice to the Organization's right to progress a claim for such compensation.

The question of whether or not the claimant's procedural rights were unimpaired by the Carrier's refusal to recognize the representative of his choice need not be treated with here because this record establishes beyond question that Claimant's dismissal from service on a charge of "loitering" in the cab of an engine cannot be justified. A clear preponderance of the evidence shows that the Claimant occupied the cab pursuant to the instructions of his immediate supervisor and that he was there not for the purpose of loitering, as alleged, but to utilize the two-way radio in accordance with those instructions. To dismiss a man from service for complying with the instructions of his supervision is patently an arbitrary and capricious act which cannot be justified or condoned.

Accordingly, the Board finds that pursuant to the provision of Rule 31(g) the Claimant shall be compensated for all wages lost for the period March 17, 1967, through October 9, 1967, and that he will be made whole for loss of benefits, if any, to which he may be entitled under valid existing agreements between the parties.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1969.