



Award No. 5816

Docket No. 5646

2-LV-CM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 96, RAILWAY EMPLOYES'
DEPARTMENT, AFL — CIO
(Carmen)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the discipline assessed against Carman Anthony Baldisarra to the extent of suspension on January 19, 1967; February 22, 23, 24, 25 and 28, 1967; was improperly arrived at and represents unjust treatment within the meaning of Rule 37 of the controlling agreement.
2. That the Carrier accordingly be ordered to compensate Carman Anthony Baldisarra eight (8) hours at his applicable rate of pay for each of the respective dates as shown above and notation removed from his service card.

EMPLOYEES' STATEMENT OF FACTS: Carman Anthony Baldisarra, hereinafter referred to as the claimant, is regularly assigned to carman position on the shop track, Monday through Friday, and has been employed by the Lehigh Valley Railroad since 1949.

In letter dated January 18, 1967 the claimant received the following notification from Mr. F. L. Cocco, General Foreman:

"As a result of leaving the Company property at approximately 7:10 A.M. January 18, 1967 without permission, you are hereby being held out of service pending a hearing and investigation. You will be advised within a reasonable length of time the date and place of the hearing and investigation."

In letter dated January 19, 1967 the claimant received the following notification from Mr. G. P. Barth, Master Mechanic:

"In accordance with Rule 37 of the current agreement between the System Federation No. 96 and the Lehigh Valley Railroad, you are hereby notified to report for a hearing and investigation in connection with failure to comply with reasonable request given you by your supervisor. Approximately ten (10) minutes after your starting time on January 18, 1967.

The position of the employees in this case should not be sustained in this case.

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 in this case suspended from his job for a period of six days following due notice of an investigation, hearing ect, at the conclusion of which he was found guilty and given the aforementioned suspension. Claimant along with three other employees reported for work on the date in question, was issued instructions to perform certain work, and within a half an hour told his supervisor that he was ill and was going home. The other three employees were issued the same instructions and they too, within a half an hour reported ill and went home.

The latter three employees were properly notified of an investigation and hearing as was Claimant. The hearings accorded these three men were attached as exhibits by the Organization. We have carefully examined them and compared them to the hearing afforded the Claimant. They are remarkably similar in content and more importantly for the evidence presented. All four men for some mysterious reason became ill at approximately the same time and reported off duty. It is difficult to understand why the three fellow employees of the Claimant were exonerated and why the Claimant, involved in the same set of circumstances, evidentially speaking, was found guilty. Confronted with this most unusual situation, we are constrained to say that Carrier's action in this matter was arbitrary. We will sustain the claim.

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 16th day of December, 1969.