



Award No. 5884

Docket No. 5826

2-C&O-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 41,
RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO
(ELECTRICAL WORKERS)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(SOUTHERN REGION)**

DISPUTE: Claim of Employees:

1. That under the current agreement Electrician John H. Stover was unjustly discharged from service on October 12, 1967.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to restore this employe to service with all seniority rights unimpaired, vacation and Health and Welfare benefits unimpaired and compensated for all time lost retroactive to October 12, 1967.

EMPLOYEES' STATEMENT OF FACTS: Electrician John H. Stover, hereinafter referred to as the claimant, was employed by the Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, for twelve (12) years at Newport News, Virginia, Piers.

Claimants regularly assigned work week was Tuesday through Saturday, 11 P.M., to 7 A.M., Pier 15.

On August 24, 1967, claimant reported to work on his regular assigned 11 P.M., shift and was issued time card by Electrical Foreman H. E. Cronk, and proceeded to his assigned position at Pier 15.

Subsequent to reporting to Pier 15, while performing his assigned duties of checking loading machinery aboard ship, SS Stadt Emden, he had conversation with several of the crew.

Following this conversation, several of the crew caught claimant from behind, shoving him down the passageway. Claimant regained his footing three or four times, but each time he did so, the crew would strike him with their fists again, knocking him down. This continued until claimant was rendered unconscious.

Machinist Clifton and Machinist Helper Chattin were requested to assist claimant from the ship. Claimant was helped down the Jacobs' ladder, and proceeded to the general foremans' office to report the incident.

officers having been present at the investigation, being familiar with Stover's record, etc., and hearing the actual statements of the witnesses, determined that Stover was guilty and in view of the seriousness of the charges, Stover's previous record, etc., rendered dismissal discipline.

The employees have brought this case to the board and it is incumbent upon them to support their actions. In all of the handling on the property, leniency was stressed and requested. Carrier has shown that the granting of leniency is beyond the jurisdiction of the board and again urges that the case be dismissed. If, however, this request is denied, carrier then urges that the dismissal discipline, which was fully justified on the basis of the record, be upheld and that the claim of the employees be denied in its entirety.

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 employees 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 was charged with: "(1) Being under the influence of intoxicants during your assigned tour of duty at Pier 15 south between 11:00 P.M., August 24, 1967, and 7:00 A.M., August 25, 1967; (2) Leaving your job and entering the crew's quarters on the SS STADT EMDEN sometime around midnight of this same tour of duty without permission from your foreman."

After hearing was held, Carrier advised Claimant by letter, dated October 12, 1967, that he had been found guilty of "being under the influence of intoxicants" during his tour of duty on August 24, 1967, and he was thereby dismissed from service of Carrier.

Carrier's member of this board at the oral panel discussion raises for the first time the issue as to whether or not this Board has jurisdiction to hear this dispute and argues that the dispute should have been submitted to the Fourth Division of the National Railroad Adjustment Board for adjudication.

This Board has on numerous occasions held that the question of jurisdiction may be raised at any time. Therefore, we must first decide whether this Board has jurisdiction to decide this dispute.

Section 3(h) of the Railway Labor Act concerning the Second and Fourth Divisions provides:

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheetmetal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing coach cleaners, power-house employees and railroad-shop laborers * * * * *."

"Fourth division: To have jurisdiction over disputes involving employees of carrier directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carrier over which jurisdiction is not given to the first, second and third divisions * * * * *."

We do not agree with the contention of Carrier's member of this Board that inasmuch as Claimant was assigned to maintain and repair loading

machinery at Pier 15, then the Fourth Division has sole jurisdiction to decide the claim herein. The jurisdiction as given by the Railway Labor Act involves employees engaged in transportation of * * * * property by water. Here Claimant did not have the responsibility of loading or unloading "property" to be transported by water. His duties were to see that the "loading" equipment was in a constant state of repair. Claimant was responsible for all electrical equipment pertaining to the pier. He had nothing to do with the actual loading of property, in this instance, coal, into the ship so that it could be transported by water. Therefore, we cannot conclude that Claimant was an employee engaged in directly or indirectly transporting property by water. Inasmuch as the Railway Labor Act specifically gives jurisdiction to this division over disputes involving "electrical workers", and it is undisputed that Claimant is an electrical worker, then this Division has jurisdiction to decide this dispute.

The Organization raises procedural defects in that Claimant was denied the right of a fair hearing as provided by Rule 37 of the Agreement because the hearing officer, who pressed the charges against Claimant, was conductor, prosecutor, judge and jury, and was therefore biased and prejudicial against Claimant; that Claimant was denied the right of proper representation inasmuch as he was denied the right to have the Local Chairman, Mr. Motley and the General Chairman represent him at said hearing.

First, in regard to the latter allegation, we find that both Mr. Motley and Mr. Douglas were present at the hearing and limiting the questioning of witnesses to Mr. Douglas was not in our opinion prejudicial to Claimant. Rule 37 refers to: "the right to be represented by his duly authorized representative". Nothing in said rule made it mandatory upon Carrier to permit Claimant to have more than one representative interrogate witnesses at the hearing. Second, concerning the allegation that hearing officer did not render Claimant a fair hearing, close examination of the record fails to disclose that the conduct of the presiding officer was prejudicial to the Claimant so as to prevent him from being afforded a fair hearing. Thus the contentions of the Organization in regard to said procedural defects are without merit and must be denied.

Claimant was charged by Carrier as follows:

"1. Being under the influence of intoxicants during your assigned tour of duty at Pier 15 south between 11:00 P.M., August 24, 1967, and 7:00 A.M., August 25, 1967.

"2. Leaving your job and entering the crew's quarters on the SS STADT EMDEN sometime around midnight of this same tour of duty without permission from your foreman."

The evidence presented at the hearing clearly shows that Claimant was "under the influence of intoxicants" as charged by Carrier on the date in question. This is substantiated by the testimony of a disinterested witness, Lt. Godsey of the Newport News Police, who stated at the hearing that it was his opinion that Claimant was under the influence of intoxicants when he observed Claimant at the hospital on the date in question, having said opinion upon the fact: "* * * * but I could strongly smell alcohol on his breath and he did stagger when Mr. Bell was leading him out of the hospital." Further, Claimant, who evidently was badly mauled by the crew of the ship involved in the fracas, failed to sufficiently apprise Carrier of the reasons why he was in the crew quarters of the ship. Claimant did not at any time claim that he was there on company business, inspecting or working on any machinery

located in said crew quarters. Also, other witnesses of Carrier testified to the fact that Claimant was "under the influence of intoxicants" on said date.

It is therefore our judgment that Claimant was guilty as charged. The fact that Carrier did not find him guilty of the second charge does not in our opinion invalidate or void his guilt of the first charge.

Further, in regard to the Discipline of Dismissal, we do not find said penalty unreasonable, arbitrary or excessive under the circumstances involved in this case. The acts committed by Claimant herein were of a very serious nature. Claimant, from the facts adduced at the hearing, was not attentive to his duties, namely, of seeing that the loading machinery was in proper working order. Further, drinking in the crew's quarters and being involved in a brutal fight with German national crew members aboard ship could have produced serious results to all concerned, the Carrier, the Claimant and the owners and members of the crew of the ship involved. We are not empowered on the basis of leniency alone to find in this instance that said penalty of dismissal was excessive. Having clearly violated Carrier's rules, Claimant must suffer the consequences. Therefore, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.