

Award No. 5998
Docket No. 5856
2-PTRRA-(CM)-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

PORT TERMINAL RAILROAD ASSOCIATION

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Carman W. C. Velasquez was unjustly dismissed from the service of the Carrier on November 7, 1968.

2. That accordingly the carrier be ordered to restore W. C. Velasquez to service with seniority rights unimpaired and compensated for all time lost retroactive to and including November 7, 1968 and made whole for all benefits accruing to employees in service.

EMPLOYES' STATEMENT OF FACTS: Carman W. C. Velasquez, hereinafter referred to as the claimant, was employed as a carman mechanic January 19, 1960, by the Port Terminal Railroad Association, hereinafter referred to as the carrier, at Houston Texas. The claimant bid on Job 7-29, which job required that the applicant who was assigned to that job to furnish their own transportation of using their automobile or truck, with pay allowance for use of automobile or truck. The claimant was the successful bidder, and was assigned to Job No. 7-29, February 8, 1968.

At 9:05 A. M., on February 13, 1968, the claimant was instructed by the car foreman to go to the carrier's Manchester Yard to assist in coupling air hose, and to use his own automobile to make this trip to the Manchester Yard. While the claimant was enroute from the North Yard to the Manchester Yard, he had an automobile accident and did not get to the Manchester Yard, and when the claimant returned to the Carrier's North Yard, the carrier's car foreman approached the claimant and asked as to why he did not comply with his instructions, and the claimant gave the car foreman his reasons why. At about 11:55 A. M., on February 13, 1968, the claimant asked to be taken to see a doctor, and his request was granted and the carrier's master mechanic, Mr. J. R. King, took the claimant to see a doctor.

Then, on February 16, 1968, the claimant was charged for being insubordinate and with failure to perform his duties in the proper manner.

Although the investigation was repeatedly postponed, Claimant elected not to appear for the investigation. Carrier had competent and unrefuted testimony on which to base the finding that the facts adduced in the hearing supported the charge. Insubordination on this carrier has consistently been dealt with as a dismissable offense.

SUMMARY

1. The claim should be denied for failure to comply with the time limit requirements of the agreement as well as for failure to notify the Superintendent that his decision was not accepted.

2. On merit, the claim should be denied, as the facts brought out in the transcript adequately support the charge and the testimony of the witnesses stands unrefuted.

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.

Under the provisions of Rule 24 of the Agreement between the parties and the provisions of the August 21, 1954 Agreement, the Board is constrained to find that Claimant's appeal was not timely, and the claim must, therefore, be dismissed.

AWARD

The claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1970.