Award No. 6006
Docket No. 5760
2-CUT-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electrical Workers)

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Cincinnati Union Terminal Company violated the controlling agreement when they unjustly dismissed Electrician Estle E. Alsip from service, effective September 25, 1967.

2. That, accordingly, the Cincinnati Union Terminal Company be ordered to reinstate Electrician Estle E. Alsip to service with seniority and vacation rights unimpaired; compensate him for all time lost, from September 25, 1967 until restored to service; and make him whole for all other benefits he would have been entitled to had he not been unjustly dismissed.

EMPLOYES' STATEMENT OF FACTS: Electrician Estle E. Alsip, hereinafter referred to as the claimant, has been employed by the Cincinnati Union Terminal Company, hereinafter referred to as the carrier, for twenty-four (24) years.

On June 6, 1967 claimant received notice to appear for a hearing at 10:00 A. M., June 13, 1967 in the office of the master mechanic on the following charge:

"Securing the professional services of our Lady of Mercy Hospital, Mariemont, Cincinnati, Ohio on or about May 28, 1967 and having billing directed to Cincinnati Union Terminal Company, Attention Mr. R. D. Steed for payment, without authority to do so."

General Chairman, by letter dated June 7, 1967, requested postponement of hearing from June 13 to June 20, 1967, or to a mutually agreeable later date. Carrier granted this request, by letter dated June 12, 1967, and rescheduled the hearing for June 20, 1967. Hearing was held as rescheduled.

Claim Agent R. F. Vonderake and Master Mechanic Elmer Dryer visited the home of Claimant on June 22, 1967, for the purpose of recording an interview, by Dictaphone machine, reference to an injury sustained by Claimant on June 10, 1967.

CONCLUSION

The record of the present claim shows conclusively that Mr. Alsip deliberately made a series of contradictory and conflicting statements for the purpose of avoiding the consequences of his failure to comply with accident reporting rules and for the purpose of obtaining monetary compensation from the carrier. By so doing he frustrated and obstructed the carrier's efforts to carry out its statutory duty under the accident reports act. Although Mr. Alsip was given several previous warnings in regard to violation of company rules, he continued to disregard the resasonable rules of conduct required of other employes. Based on the record and what has been said heretofore, carrier respectfully requests this board deny the claim 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 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 was discharged from service after an investigation hearing on September 25, 1967. The record discloses that this Claimant made conflicting statements concerning injuries he received on May 3 and May 10, 1967. He had been an employe of Carrier since February 4, 1943 and had complied with Carrier's Safety Rule Book provisions on three occasions prior to 1967 as these rules pertained to reporting injuries. The amount of the May 3 bill for medical treatment was in the amount of $15.00. Claimant alternately, on several occasions, claimed that the injury occurred while on the job and that the injuries did not occur while on the job. On June 10, 1967, Claimant reported an injury to his back while carrying out his duties. At the investigation hearing, he stated that he was presenting a claim as a result of an accident that occurred on May 3, 1967, which included the June 10th accident. There is no doubt that this Claimant violated Safety Rule 1002 which required the employe to report any injury prior to leaving the company's premises, as well as Safety Rule 32. The record also discloses that there were conflicting claims made concerning the May 3, 1967 and May 10, 1967 injuries. It must, therefore, be concluded that Carrier was justified in assessing a discipline penalty against this Claimant, not only for failing to report the injuries as required in Carrier's Safety Rules, but by making conflicting statements concerning these injuries, thereby obstructing the Carrier's efforts to comply with the Accident Reports Act. Therefore, the only question to be considered in this dispute is whether or not the penalty of discharge from service was so severe as to be determined arbitrary and capricious.

The prior awards on this subject are of little assistance. Award No. 4526 (Seidenberg) concludes that dismissal from service is proper under similar circumstances. Also, see Award 11741 (Rock) which shares a similar view with that of Award 4526. Awards No. 3883, 5532, 4557, 4793, 4866, and 4911 of this Division set out the standard for compensation to Claimants being restored to service by this Board and define "wage loss" as being the wage Claimant would have received less the reduction to the extent of compensation earned, if any, by Claimant from other employment during this period of time, including unemployment compensation.

In view of the small amount involved in the conflicting claims for medical attention and compensation for days lost because of the accident or accidents involved, coupled with the fact that this Claimant had been in service of this Carrier for almost 25 years, we believe the penalty imposed is too severe and incommensurate with the offense to the extent that it must be regarded as unreasonable and arbitrary. See Award 4532 (Seidenberg). Although we believe that the Carrier was justified in disciplining this Claimant, we believe that total dismissal was unreasonable and in view of that finding, we further find that an appropriate penalty to be imposed upon this Claimant should be that he be withheld from service from September 25, 1967, until September 24, 1968, a period of one year. It is the further finding of this Board that he be restored to service and with seniority and vacation rights unimpaired; that he be compensated for time lost from September 25, 1968 until restored to service, less any income he might have had from September 25, 1968, until being restored to service, including unemployment compensation. It is the further finding of this Board that this Claimant must accept reinstatement under the above set out terms within 30 days from date of notification to return to service or forfeit all rights conferred to Claimant by this award.

AWARD

Claim sustained except as modified by the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1970.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 6006

From the inception of this claim, the Carrier attempted to carry out its duty under the Accident Reports Act (45 U.S.C. 3843) to investigate the circumstances of the alleged May 3, 1967 injury to the claimant in order to make the report required by law and to avoid the penalty prescribed by the statute for failure to make such report. Each time the Carrier believed the matter settled, some new development initiated by or on behalf of the claimant reopened the question of alleged on-the-job injury on May 3, 1967.

The record is clear that claimant deliberately made a series of contradictory and conflicting statements for the purpose of avoiding the consequences of his failure to comply with accident reporting rules and for the purpose of obtaining monetary compensation from the Carrier. Also he was given previous warnings in regard to violations of company rules, which he continued to disregard. Based on his previous record plus the present infraction, this claim should have been denied in its entirety.

It is obvious that there was a lack of consideration and indifference to the record by the majority and that they erred in their findings in this case; therefore, we dissent.

H. F. M. Braidwood
W. R. Harris
P. R. Humphreys
J. R. Mathieu
H. S. Tansley

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