

Award No. 6072
Docket No. 5907-I
2-N&W-I-'70

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTES:

**MR. D. P. NEAMOND, PETITIONER
NORFOLK AND WESTERN RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEE:

To have the Petitioner, D. P. Neamond, reinstated with the Carrier, Norfolk and Western Railway Company, with his seniority rights and all other rights unimpaired and compensated for all wage losses resulting from his wrongful dismissal from the service of the said Carrier.

STATEMENT OF FACTS: At 11:45 P. M., September 9, 1964, the petitioner received from the Carrier the following notice:

You are hereby charged as follows:

“With improper operation of the Pier 5 Barney at approximately 4:00 A. M., September 6, 1964, in that you failed to detect broken tail rope and ran the barney to the top of incline on lower track, resulting in running the barney off the end of track, tangling the haul cables and destroying the tail rope.”

A formal investigation will be held at 9:00 A. M., September 11, 1964, in the office of the General Foreman—Piers, to consider these charges. You may be represented by any representative(s) of your choice, and you may present any witnesses you desire.

FORMAL INVESTIGATION

Office of General Foreman—Piers
Lamberts Point Coal Piers9:00 A. M.
Concluded9:35 A. M.
Friday, September 11, 1964

Present: H. E. Sutton — General Foreman—Piers
F. R. Smith — Assistant Foreman—Piers
J. F. Goode — Assistant Foreman—Piers
J. H. Goosby — Gang Leader
E. T. Keesee — Dumper Operator (Committeeman)
H. N. Bryan — Dumper Operator (Committeeman)

"AWARD 2066:

The subject of discipline should never be treated lightly. It is a subject which this Board must consider quite frequently. We recognize the need for discipline to maintain order, safeguard lives and to secure a pattern of general efficiency.

As we regard the subject of discipline, it should be considered from the standpoint of reasonable effectiveness. Punishment of the violator should be of a degree compatible with the seriousness of the violation.

The purpose of discipline is two-fold — to punish the violator and to point out to other employes the seriousness of violations.

AWARD 1323:

* * * it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion * * *."

Also see Second Division Awards 1575, 1809, 1979, 2207, 2925, 3081, 3430 and 1121; Third Division Awards 3125, 3149, 3112, 891 and 135; Fourth Division Awards 377, 375, 345 and 332.

The record in this case speaks for itself. There can be no questions that the responsibility of the claimant in connection with the charges preferred against him were fully developed and this dismissal was warranted and the carrier respectfully requests that the carriers' actions not be disturbed and the claim denied.

It is unrealistic to believe your board can, after consideration of the evidence presented, render a favorable decision for the claimant.

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 were given due notice of hearing thereon.

Claimant was employed by The Virginian Railway Company prior to its merger with the Norfolk and Western Railway Company. Following the merger the agreement between this class of employes and The Virginian Railway Company remained in effect.

At the time of the incident for which the Claimant was discharged, he was employed as a Car Dumper Operator in Carrier's facilities at Norfolk, Virginia.

In their Submission, the Carrier challenges the jurisdiction of this Division over a dispute involving this class of employes.

Section 3, First (h) The Railway Labor Act reads in part:

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employes, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employes."

* * * * *

"Fourth division: To have jurisdiction over disputes involving employes of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employes of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employes."

Claimant was represented by Local Union No. 1142, International Brotherhood of Electrical Workers. There is no evidence in the record that Claimant performed any electrical work or any work other than as a Car Dumper Operator.

Second Division, N.R.A.B. Award 6003 (Gilden) states in part:

"Notwithstanding that claimant is represented by Local Union No. 1392, International Brotherhood of Electrical Workers, and is subject to and governed by the labor contract between Carrier and the Electrical Workers, the circumstance that he is a signalman, and not an electrical worker, precludes this Division from adjudicating this claim."

We find that this Division does not have jurisdiction over this dispute. Accordingly, we will dismiss the Claim without prejudice.

See Second Division N.R.A.B. Awards 4419, 4420, 4777 and 4953.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago Illinois, this 15th day of December 1970.

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