

Award No. 6195
Docket No. 5980-I
2-PCT(NYC)-I-71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE:

E. N. KARL, Petitioner

PENN CENTRAL TRANSPORTATION COMPANY

DISPUTE: CLAIM OF PETITIONER:

This claim is for compensation by the carrier for 60 working days that claimant, Edward N. Karl, Local Machinist Chairman, was withheld from service, without justification, as a result of hearings held due to charges of rules violations made without any basis in fact, by J. T. Dixon, General Foreman at the Selkirk Fuel Station, Selkirk, New York, concerning an occurrence there on January 24, 1967, and adding a dismissal by the carrier of the charges of the alleged rules violations preferred against claimant as aforesaid.

EMPLOYEE'S STATEMENT OF FACTS: At approximately 5 A.M. on January 24, 1967, having completed his last work assignment, claimant was on his lunch period in the so-called B&A locker room, together with other employees, where lunches and meals were customarily eaten.

While on this lunch period, claimant was approached by two individuals unknown to him, one of whom demanded to know his name. It appears that the one demanding the aforesaid information was Superintendent E. D. Joslin, who thereupon directed claimant's removal from service. Subsequently, claimant received a letter from the carrier, dated January 25, 1967, notifying him that he was being charged with seven rules violations. A copy of said letter is attached hereto and made a part of this submission.

Subsequent to the receipt of the aforesaid letter, hearings were held on January 30, March 8 and 9, 1967, concerning the charges and alleged rules violations, transcripts of which are annexed hereto and made a part hereof.

The charges preferred against claimant were as follows:

1. Found asleep on duty.
2. Neglect of duty.

"1. The term 'insubordination' usually refers to an employe's refusal to submit to the authority of a duly authorized supervisor and to obey his instructions. However, 'insubordination' may also be demonstrated by profane or vile remarks addressed to a supervisor by an employe. The right of an employer to take appropriate disciplinary action against an employe who is found guilty of either type of insubordination is beyond doubt." (Emphasis ours.)

In view of all of the foregoing, carrier submits that there is no proper basis on which your Board can reverse the Carrier's action in this case. The claimant was afforded a fair hearing, the finding of guilty is supported by substantial evidence, and the discipline of 60 days' suspension imposed was not unreasonable in light of the serious nature of the offenses. Accordingly, there is no merit to the claim in this dispute, and your Honorable Board is respectfully requested to deny the claim.

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.

There is some conflict in the evidence, but it is not the function of this Board to resolve conflicts in testimony. In the opinion of the Board there is sufficient evidence in the record to support the conclusion that some disciplinary action was proper. We, therefore, are compelled to deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November, 1971.