



Award No. 6196
Docket No. 5991-I
2-SOU-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:

JOHN J. BLACKMON, Carman
SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF PETITIONER:

1. The employer violated Section 34 of the current contract which states among other things that an employe will not be dismissed without just and sufficient cause.

2. The employe seeks his immediate reinstatement to the position he held on the date of his discharge, as well as back pay for all time loss during the period of his discharge, in addition to all the other benefits to which he would have been entitled had the wrongful discharge not taken place.

EMPLOYEE'S STATEMENT OF FACTS: Mr. John Blackmon is a black male, who had been employed by Southern Railway for three years as of July 7, 1968. Blackmon had worked continuously as a car inspector.

On the early morning of July 7, 1968, Blackmon worked the third shift. After he and two other employes, Jack Slaughter and R. W. Campbell, had worked the cars on Track 7, they all came back to the shack. Campbell and Slaughter went into the shack, while Blackmon walked to his car, got in, and went to sleep. Sometime a little later, Campbell came to his car and woke him up, as there were additional cars on Track 5 to be worked. Campbell walked ahead as Blackmon lingered behind to turn on his light, get his oil bucket, and fill it with oil.

Blackmon joined Campbell and another worker at Track 5, and they worked out the cars on the track. After finishing, they were asked to put air on Track 7 to check for leaks. When they had done this, Blackmon and Campbell discovered a leak on another car. Blackmon then proceeded to his car to get his wrench, leaving Campbell behind. This was the last time he saw Campbell.

Blackmon went to his car, got in it, and drove his car back down alongside the tracks, with his headlamps burning, in the hope of seeing Campbell.

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.

This Board does not presume to substitute its judgment for that of a Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. A Carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory when the Carrier does not apply and enforce the rules with reasonable uniformity for all employes; when rule violation by an accused employe is not established by substantial evidence; when a timely hearing after notice on specific charges is not held in accordance with the provisions of the parties' agreement; when the accused is not allowed to have representation, to testify, and, if he wishes, to have other witnesses in his behalf; when the Carrier's managerial representative acts as chief witness as well as interrogator and judge (obviously it is permissible for said representative to act as interrogator and judge); or when the degree of discipline is not reasonably related to the seriousness of the proven offense.

In judging the above, mindful that the Carrier has the burden of proving its charge and of showing its conduct and decision were not unreasonable, the Board will not go beyond the record developed at the Carrier's investigation.

The precedent is well established that this Board should not substitute its judgment for that of the Carrier in discipline cases where it has produced substantial evidence that the offense charged was committed. While the administration of disciplinary action should not seem haphazard or capricious, it is clear that the imposition of discipline is within managerial discretion.

We cannot find anything in the record which would enable us to sustain the Claimant's position as to his guilt or as to the discipline imposed. We conclude that such discipline was commensurate with the offense, and will 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.

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