



Award No. 6244
Docket No. 6073
2-PCT-MA-'72

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 DISPUTE:

**SYSTEM FEDERATION NO. 1, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

PENN CENTRAL TRANSPORTATION COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist J. Leddy was unjustly dismissed from service on November 7, 1968. That Machinist J. Leddy was not granted a fair and impartial hearing on November 1, 1968.
2. That accordingly the Carrier be ordered to restore Machinist J. Leddy to his Machinist position with all rights unimpaired and compensated for all time lost from November 7, 1968, and the unjust discipline removed from his record.
3. That the Carrier be ordered to additionally compensate Machinist J. Leddy for all costs incurred by him in continuing his Travelers Insurance, hospital and life, during the period of his dismissal.

EMPLOYEES' STATEMENT OF FACTS: Machinist J. Leddy, hereinafter referred to as the claimant, was employed by the New York, New Haven and Hartford Railroad Company, hereinafter referred to as the carrier, for a period of 23 years. Claimant was assigned to a regular machinist position on the 1:00 P. M. to 7:00 A. M. shift at Danbury Engine House, Danbury, Connecticut. Under date of October 24, 1968, claimant was notified to attend a hearing to be held in the foreman's office, at 10:00 A. M., October 29, 1968, in connection with the following charges:

"(1) Failure to perform your assigned duties on October 10, 1968 when you failed to repair items reported by engineer on Locomotive No. 518 and No. 559, and your failure to properly inspect Locomotives No. 518 and No. 559.

(2) Being found in a prone position on October 11, 1968, in Budd Car No. 120, after rearranged the seats to form a bunk."

Hearing was re-scheduled to November 1, 1968, and held on that date.

vindictive, or acted in bad faith. It is also the position of this Board that we cannot substitute our judgment for that of the Carrier. Awards 11017 (Dolnick), 10642 (LaBelle), 10595 and 10596 (Hall)."

The carrier desires to make a final comment with respect to that portion of Employes' Statement of Claim wherein the request is made that the claimant be compensated for all lost time from November 7, 1968 and "that the carrier be ordered to additionally compensate Machinist J. Leddy for all costs incurred by him in continuing his Travelers Insurance, hospital and life, during the period of his dismissal." In this connection, should your Honorable Board find, contrary to the facts, that claimant has been improperly disciplined and that his record should be cleared, any compensation due the claimant under such circumstances would be subject to the application of Rule 34 of the agreement, which reads, in pertinent part, as follows:

" . . . If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

In the application of the above rule, the phrase "wage loss, if any" has been interpreted to permit the deduction of outside earnings in making monetary adjustment in discipline cases. This interpretation is consistent with Awards of the National Railroad Adjustment Board typified by Second Division Award 1821 in which Referee A. E. Wenke stated, in pertinent part:

"The claim is made for 'compensation for all time lost since the aforesaid date', which is December 3, 1952. This right is qualified by the language of Rule 29, which provides he shall be 'compensated for his net wage loss, if any, resulting from said . . . dismissal.' In other words, claimant must show, before he can recover any compensation, that his dismissal has resulted in a net wage loss and, if he does, he can recover the amount of net wage loss he establishes he actually suffered as a consequence of his dismissal."

The rule has no provision for compensation of "all time lost" or "costs incurred by him in continuing his Travelers Insurance, hospital and life, during the period of his dismissal." Consequently, your Board is without authority to grant any such request.

CONCLUSION

The weight of evidence adduced at the hearing, as enumerated above, reveals that claimant Leddy was granted a fair and impartial hearing, which supported the charges, and the discipline assessed therefor was justified. The claim should be denied.

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 as a Machinist by the Carrier for a period of twenty-three years. He was assigned to a regular Machinist position on the 11:00 P. M. to 7:00 A. M. shift at Danbury Engine House, Danbury, Connecticut. On October 24, 1968, Claimant was notified to attend a hearing to be held in the Foreman's office at 10:00 A. M., October 29, 1968, in connection with the following charges:

"(1) Failure to perform your assigned duties on October 10, 1968, when you failed to repair items reported by engineer on Locomotive No. 518 and No. 559, and your failure to properly inspect Locomotives No. 518 and No. 559.

(2) Being found in a prone position on October 11, 1968, in Budd Car No. 120, after rearranged the seats to form a bunk."

Hearing was rescheduled to November 1, 1968, and Claimant was dismissed from service effective November 7, 1968.

This Board has consistently held that discipline imposed by a Carrier will not be disturbed unless the Carrier's action was arbitrary, capricious, or unreasonable.

After a careful review of transcript of the investigation, we do not believe the Carrier was justified in dismissing the Claimant from its service. Based upon the transcript of the investigation, we find the Carrier's action to be unreasonable.

We will sustain Item 1 of the Claim. Item 2 will be sustained less outside earnings, if any. We find no basis in the agreement for sustaining Item 3 of the Claim. (See Second Division, National Railroad Adjustment Board Award 6047.)

AWARD

Item 1 sustained.

Item 2 of the Claim sustained less outside earnings, if any.

Item 3 of Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of February, 1972.

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