

**Award No. 6251
Docket No. 6116
2-B&O-EW-'72**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That The Baltimore and Ohio Railroad Company unjustly suspended Telephone Maintainer John E. Teagle from the service of the Carrier from February 19, 1970 until March 17, 1970, pending disposition of the hearing proceedings, after which, on March 17, 1970 he was formally notified and dismissed from the service of the Carrier.

2. That accordingly, The Baltimore and Ohio Railroad Company be ordered to compensate Telephone Maintainer John E. Teagle for all wage losses continuous from date of dismissal, March 17, 1970, reinstated to the service of the Carrier with seniority rights unimpaired, made whole with respect to his vacation rights, hospitalization, medical-surgical care and group life insurance, removal of any and all notations which may appear on the service record of the claimant resulting from this alleged charge and dismissal. In addition thereto, we submit claim for 6% interest per annum, compounded annually on the anniversary date of the instant claim.

EMPLOYEES' STATEMENT OF FACTS: On February 18, 1970, Telephone Maintainer John E. Teagle was arrested and incarcerated by the Baltimore City Police subsequent to the carrier's filing a stolen vehicle report on a Communications' Department Service Truck.

Under date of February 19, 1970, Assistant Regional Supervisor Communications P. G. Miller served formal hearing notice on claimant John E. Teagle, apprising him of his immediate suspension from service pending hearing and decision on the specified charges.

At the request of General Chairman Lachowicz, and by mutual agreement, hearing proceedings were postponed from February 24, 1970 until March 5, 1970.

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

Carrier also wishes to point out that the claim as made requests far in excess of what is contemplated by the rule. Carrier's comments in this respect are not in anyway intended to detract from its position as set forth above but merely mentioned for the record.

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.

This is a disciplinary case in which claimant was charged with (a) having in his possession a vehicle of the Carrier without proper authorization; (b) removing same vehicle from Carrier's property for other than company business in violation of his supervisor's instructions; (c) using said vehicle to transport other than Carrier's employes on the date specified in violation of company instructions and (d) subjecting Carrier to payment of \$26.50 to recover said vehicle, which had been impounded by the local police.

After having been properly charged, an investigation was held during which claimant was present, was represented by counsel of his own choosing, was given the opportunity to testify, present witnesses on his own behalf, cross examine hostile witnesses, face his accusers and given every right consistent with due process and our concept of a fair and equitable hearing.

The evidence presented against the claimant in this case was overwhelmingly against him, and the finding of guilty as charged was based on such evidence. In the absence of Carrier acting in an arbitrary and capricious manner, which they most assuredly did not do in this case, we are unable to sustain the position of the claimant. We will accordingly deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1972.

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