

Award No. 6280
Docket No. 6122
2-C&O-MA-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. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Machinist Donald Szostak was unjustly discharged from service on May 14, 1970.
2. That accordingly the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and compensation for all time lost including overtime on May 14, 1970, as well as vacation rights, health and welfare benefits, lost wages to be paid at interest rate of six per cent per annum.

EMPLOYEES' STATEMENT OF FACTS: Machinist Donald Szostak, hereinafter referred to as the claimant was employed by the Chesapeake & Ohio Railroad, hereinafter referred to as the Carrier, for a period of thirteen (13) years in Carrier's Grand Rapids and Saginaw, Michigan Locomotive Shops and was at the time of dismissal assigned at Saginaw Shops on the 11:00 P. M. to 7:00 A. M. shift Tuesday through Saturday. with Sunday and Monday rest days.

The Carrier, represented by Mr. D. C. DeLeeuw, Master Mechanic, notified claimant under date of April 14, 1970 to attend an investigation to be held in the conference room, second floor, Mechanical Department Office Building, Saginaw, Michigan at 8:00 A. M. Wednesday, April 12, 1970 on the following charges:

"You are charged with being absent from duty without permission, illegal picketing of Chesapeake and Ohio Railway Company property, engaging in an illegal strike, disloyalty, and conduct unbecoming an employe of this company at Saginaw, Michigan between the hours of 10:45 P. M. Friday, April 10, 1970 and 10:00 A. M. Saturday, April 11, 1970, resulting in the Company being unable to operate and to fulfill its duties to shippers and public as required by law."

and likewise, in Third Division Award 4855:

"The Carrier is not required to retain people in its employ who have not been faithful to their trust."

Clearly Claimant Donald Szostak was not faithful to his trust either to his Union or to his employer. He consciously and deliberately committed an act violative of the Railway Labor Act as well as Public Law 91-226, the net effect of which was to bring to a total halt the operation of one of Carrier's most important terminals which inflicted costly and irreparable damage on Carrier. Fourteen employes were charged as a result of the illegal strike. In addition to Szostak, one other employe, an electrician, was dismissed, and eleven were disciplined in varying degrees of actual and overhead suspension. This is the one and only case in which the discipline administered was appealed and yet the Organization is asking your Board to completely exonerate Szostak which would leave the other twelve employes guilty and the discipline rendered against them allowed to stand.

Awards of all divisions of the National Railroad Adjustment Board have uniformly held that it is not the function of the Board to substitute its judgment for that of Carriers in discipline cases. One of the earliest Second Division Awards annunciating this principle, which has been followed in numerous succeeding awards, was Award 1323, and the following excerpt is quoted from that Award:

"* * * 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 actions be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

Szostak's allegation that he was protesting compulsory arbitration is simply not believable because if this were really his intent he would not have been carrying an "ON STRIKE" sign. His true motive was to do serious harm to Carrier, with whom he had no dispute, and he effectively accomplished that end. On the record in this case, Carrier was completely justified in dismissing Szostak from its service. The claim of the Employes should be denied in its entirety.

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, because of allegedly engaging in an illegal strike, was formally charged, given a hearing found guilty and dismissed from the service of the Carrier.

The facts in this case simply and concisely stated are as follows: President Nixon signed Public Law 91-226 on April 9, 1970, which provided that Carriers were prohibited from resorting to a lock-out of employes and employes were not permitted to strike. At approximately 10:45 P. M. on April 10, 1970, pickets appeared at Carrier terminal displaying signs "ON STRIKE—NO CONTRACT—NO WORK." This strike continued from 10:45 P. M. April 10, 1970 until approximately 10:00 a.m. April 11, 1970 resulting in much disruption to the Carrier's operations. On April 11, 1970, a temporary restraining order was issued by a Federal District Judge restraining those engaged in the strike from further picketing. Those named in the restraining order were ordered to appear in Federal Court on April 21, 1970, but since the strike had terminated on April 11, 1970, those summoned were notified on April 17, 1970, prior to the date of the discipline hearing, that the summons to appear had been cancelled.

A review of the evidence in this case leaves no doubt that claimant was guilty as charged. It was more than substantial. The discipline invoked by the Carrier was neither arbitrary nor capricious. We 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 28th day of March 1972.