

 Award No. 6284

Docket No. 6127

2-IC-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. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Illinois Central Railroad violated Rule 39 of the Schedule "A" Agreement made between the Illinois Central Railroad, and System Federation No. 99, AFL-CIO, when Machinist D. L. Beyer of Paducah, Kentucky, was suspended from service on February 6, 1970, and dismissed from service on February 19, 1970, resulting from formal investigation held on February 13, 1970.

2. That the Illinois Central Railroad be ordered to:

(a) Compensate the claimant for all lost time from February 6, 1970 until restored to service.

(b) Pay six (6) percent interest on all lost pay account of dismissal from service.

(c) Restore the claimant to service with all seniority rights unimpaired.

(d) Make claimant whole for vacation rights.

(e) Pay premiums for Group Life Insurance for all time held out of service.

(f) Pay Illinois Central Hospital dues for all time held out of service.

EMPLOYEES' STATEMENT OF FACTS: The claimant, B. L. Beyer held seniority at Paducah Shop, Paducah, Kentucky, under rule 32 of the Section "A" agreement as of October 2, 1968, and held a regular assignment on the second shift, commencing at 3:40 P.M.

On February 6, 1970, the claimant phoned the wheel shop Foreman, B. J. Vance, discussing some personal matters and advising him that he would be

Award 2657 (Second Division)

The claim seeks interest but there is no basis therefore in the rules and this Board is not a court of general jurisdiction, so such request must be denied.

Award 5672 (Second Division)

Claimants also seek six (6) per cent interest, insurance payments and other so-called benefits that may have been lost during the period they were improperly held out of service. The applicable provision of the Agreement restricts compensation payments to full pay for all time lost. Therefore, other remedies sought on behalf of claimants cannot be allowed within the limits of our authority (Awards 4793, 4866 and others).

See also Awards 13098 and 13099, First Division; Awards 5467 and 5819, Second Division; and Award 6962, Third Division.

Assuming, without conceding, that the claimant was improperly dismissed from service, he is only entitled to be restored to service with his seniority rights unimpaired and the difference between his actual earnings and what he would have earned had he not been dismissed. Nothing more.

The company has shown that this was a "proper case" for suspension pending a formal investigation because the claimant's threatening actions and belligerent attitude evidenced potential violence if the claimant remained on the job. The company has shown that the claimant received a fair and impartial hearing which was not prejudiced by the reviewing of the employee's past record by the hearing officer.

The company has also shown that the claimant was guilty of several serious offenses, among which were: using abusive language about a superior; threatening a superior; absence from work without permission; refusal to permit his superior to leave the office; and refusal to obey his supervisor's instructions to leave the premises. The company has shown that while there was a conflict in the evidence adduced at the hearing, this conflict was resolved by the hearing officer in favor of the supervisors. The Board should not substitute its judgment for that of the hearing officer because he was at the investigation and was in a better position to determine who was telling the truth. Furthermore, the company has shown that the Board should not substitute its judgment for that of the company unless it can be shown that the company was arbitrary, capricious or unfair: a contention which cannot be supported by fact.

Finally, although the company has shown that the claimant was guilty of severe misconduct and deserving of the discipline assessed, the company has shown that even if he should be reinstated, at most, he would only be entitled to net wages lost. Any monies earned during the period of dismissal should be deducted from the amount he would have earned had he remained in the service. There is no provision in the agreement for interest or any of the other monetary considerations claimed.

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 after being properly charged, claimant was afforded a hearing, found guilty and ordered to be dismissed from the service of the Carrier. He is now appealing that decision.

We have reviewed the transcript of the hearing and it is our conclusion that there is more than substantial evidence for the finding of guilty. Nor do we in this case, believe that Carrier's decision to dismiss claimant from its service was either arbitrary or 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.