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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6439
Docket No. 6243
2-RDG-FO-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen and Oilers)
(Reading Company

Dispute: Claim of Employees:

1. That under the current agreement, Crane Operator Thomas J. Casey was unjustly treated and removed from service without cause on October 29, 1970.
2. That accordingly, the Carrier be ordered to reinstate Crane Operator Thomas J. Casey with his seniority and service rights unimpaired and compensated for all time lost, and made whole for all other benefits provided for in the agreement.

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 charged with three specific incidents of misconduct:

1. His improper and careless handling of American Locomotive Crane on October 5, 1970.
2. Leaving his work assignment and being observed at location beyond his area of assignment at 11:50 A.M. on October 8, 1970.
3. His reckless handling of Austin-Western Crane resulting in damage to fire hydrant located west side of Relief Train Storage Area on October 8, 1970 at 12:45 P.M.

The investigation and hearing was held on October 15, 1970, resulting in the discharge of Claimant. The hearing officer was the Superintendent Reading Car Shops.

The only reference to the first charge appearing in the transcript was the following questions by the hearing officer and response by the Claimant:

"Q. On October 5th, were you approached about the way you were handling the American Crane - that you were running it entirely too fast on #7 track. You should slow up for your own safety and for the safety of your fellow workers?

A. Yes."

An examination of the transcript reveals apparent bias on the part of the hearing officer. One example is contained in the following question:

"Q. Why do you time and time again park your crane at this particular area and walk toward the Pass. Shop when you work at the south end of the Car Shop where all your toilet and lunch facilities are in this area?"

The Carrier presented one witness at the investigation whose total testimony, upon being questioned by the hearing officer, is as follows:

"Q. Mr. Putt, on Oct. 8th you accompanied Mr. B. O. Young, Asst. Forman, and myself to the Pass. Shop in order to check on some material. We were standing on the west side of the Pass. Shop beyond the Credit Union Office when we saw Mr. Casey walking down along the Pass. Shop. I made a statement to you "I wonder where he is going at this time." I looked at my watch and it was only 11:50 AM and I said to you "It is only 11:50 AM". Is this correct?

A. Yes."

The transcript indicates that the hearing officer acted as witness, prosecutor and judge in the course of the proceeding. We also find that the hearing officer pre-judged the Claimant prior to the hearing. Further, the record of the investigation does not support the charges with substantial evidence.

In Second Division Award No. 6196 we said "...A Carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory when ...the Carrier's managerial representative acts as chief witness as well as interrogator and judge" (See also Second Division Awards 4536, 6225, 6313 and 6329) The serious burden of conducting a fair and impartial investigation rests with the Carrier: in this case the Carrier failed.

A W A R D

Claim sustained.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January, 1973.