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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6595
Docket No. 6375
2-RDG-FO-'73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden 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 Laborer William H. Kline, Jr., was unjustly dismissed from the service of the Reading Company on August 6, 1971.
2. That accordingly, the Reading Company be ordered to reinstate Laborer W. H. Kline, Jr., to his position as Laborer, compensate him for all time lost due to his dismissal, and that he be granted all other benefits that may be due him.

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 dismissed from the service of the Carrier for failing to cover his assignment, leaving his assignment and for violation of certain of the Carrier's Safety Rules.

It is the position of the organization that the dismissal violated the Agreement because it was deficient procedurally and because it is not warranted on the merits of the case.

The procedural defect relied on by the Organization is a violation of Rule 12 which requires that an employe with more than sixty days service be not discharged or suspended without a hearing which shall be held within ten days of the offense charged or taken out of service. It is the position of the carrier that as this issue was never raised on the property the claimant cannot for the first time raise it before this Board.

The transcript of the investigation reveals that the Claimant's representatives raised a question about the ten day rule at the commencement of the proceedings. The stenographer did not transcribe the verbatim discussion of the issue but noted that the claimant's representative concurred in the reason for the late hearing. The hearing was held and the claimant and his representative affirmed at it's termination that it had been a fair and impartial hearing conducted with schedule requirements. The subsequent correspondence on the property bears no mention of the alleged procedural violation.

We can only infer from the record and the actions of the parties that on the property the claimant concurred in a waiver of the ten day time limit rule. It takes little to preserve a procedural defect but it was incumbent on the party relying on same to overcome the evidence of a positive waiver set out in the transcript.

On the merits we must also find for the Carrier. But in the opinion of this Board the evidence does not support a dismissal. The claimant no doubt absented himself from his position without permission to work on certain pigeon pens on the roof as set out in the record. But we can find no evidence that the claimant had been restricted from climbing as argued by the carrier.

Accordingly, we find that the discipline in this case was excessive in that it far overreaches what would be considered reasonable for this type of offense. This is especially true in the light of claimant's thirty four years of service with the carrier during which time, as far as the record shows, he has been a good and loyal employee. It is the opinion of this Board that claimant should be compensated for all time lost exceeding a 120 day suspension.

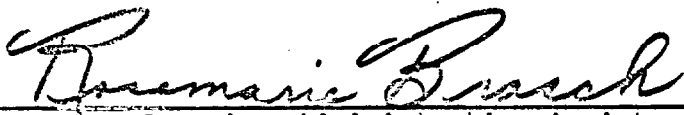
A W A R D

That the discipline was excessive. Claim sustained in accordance with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By:


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Serial No. 68

(The Second Division consisted of the regular members and in addition Referee Robert A. Franden when the interpretation was rendered.)

INTERPRETATION NO. 1 TO AWARD NO. 6596

DOCKET NO. 6379

NAME OF ORGANIZATION: System Federation No. 18, Railway Employees' Department, A. F. of L. - C. I. O. (Carmen)

NAME OF CARRIER: Portland Terminal Company

QUESTION FOR INTERPRETATION:

Does the language contained in Item 2 of the Claim of Employees in Award No. 6596, reading:

"That accordingly, the Portland Terminal Company be ordered to additionally compensate the entire wreck crew, who were not used on this assignment, namely, Carmen R. E. Palmer, E. A. Dunham, H. L. Harriman, G. H. Colton, F. G. Ham, L. M. Dorr, G. W. Rounds, and M. L. Campbell, for all time that the Rigby wreck outfit was engaged in wrecking service at Clinton, Maine, on the foregoing dates at the Carmen's applicable rates of pay under Rules 7 and 4(f) of the Agreement."

and Award No. 6596, reading as follows:

"Claim sustained in accordance with the above findings."

and the Findings of the Award, reading as follows:

"It is the opinion of this Board that the Carrier shall compensate under Rules 7 and 4(f) the members of the Rigby wrecking crew which normally have been called to operate the equipment utilized at the Clinton derailment."

require the Carrier to compensate all the regularly assigned members of the Rigby Wrecking Crew who have normally been called to operate the equipment utilized at the Clinton derailment?

For compensation purposes, the distinction made in Award No. 6596 was between employees assigned to the piece of equipment utilized and those employees who comprised part of the wrecking crew at Rigby Yard but who performed functions other than those associated with the operation of the piece of equipment in question.

INTERPRETATION NO. 1 TO AWARD 6596 (DOCKET NO. 6379) Serial No. 68

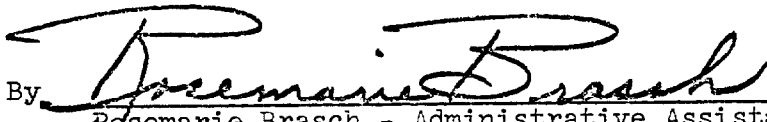
The answer to the question posed for interpretation is that only those members of the wrecking crew at Rigby Yard "necessary to operate the crane" shall be compensated. Which members of the crew that would entail is a question of fact which we are unable to determine from the record. The language in the award that "there is no basis for the carrier calling the entire Rigby wrecking crew to operate the crane" presupposes members of the crew whose positions involve functions other than those associated with the operation of the crane.

Referee Robert A. Franden who sat with the Division as a Member when Award No. 6596 was rendered, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of March, 1975.