

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International
Association
(
(Penn Central Transportation Company

Dispute: Claim of Employees:

1. Certainly discipline was proper for claimant's conduct but in view of the claimant's long record of good conduct, dismissal from the service was unjustified (harsh). The time he has now been held out of service is ample punishment.
2. We therefor request reinstatement with full seniority rights but without compensation for wage loss.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 discharged from employment with Carrier following being found guilty of serious malfeasance. There is no denial by Petitioner that Claimant was guilty as charged. Petitioner's application is to grant leniency to Claimant, an employee with many years of service, and overrule Carrier's refusal to afford same.

This Board has consistently adhered to the principles cogently and succinctly set forth in Award 2787 (Ferguson) to the effect that:

"... We are not the triers of the facts. Our duty is to establish only that a fair hearing required by the rules has been given and not to substitute our judgement for those who have had a direct and immediate opportunity to evaluate the witnesses and their evidence. Thus leniency is a prerogative which is not available to this Division, much as we might desire to recognize the personal qualities, family problems, veteran status or union affiliation of any grievant." (See also Awards 3828, 3894, 5345.)

Petitioner's submission fails to put in issue any of the factors which would afford us the authority to act contrary to the above well established standards guiding us in such matters.

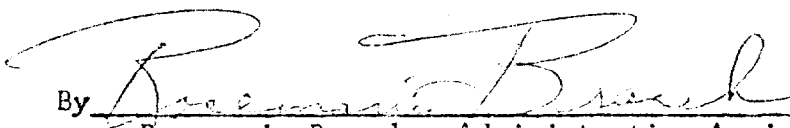
A W A R D

Claim denied.

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 25th day of June, 1974.