

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Penn Central Transportation Company

Dispute: Claim of Employees:

1. That Electrician S. D. Jackson was unjustly dealt with when he was dismissed from service of the Penn Central Transportation Company, the Carrier, on September 30, 1972 without just cause.
2. That accordingly the claimant should be restored to service and compensated for all time lost and benefits unimpaired.

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.

By letter dated September 30, 1972 Claimant was dismissed from service of the Carrier following an investigation into charges as follows:

- "1. Conduct unbecoming an employee of the Penn Central Transportation Company, at about 7:30 A.M., August 9, 1972.
2. Using profane language and being belligerent toward a Police Officer of the Penn Central Transportation Company at about 7:30 A.M., August 9, 1972."

The record shows and the hearing established that Claimant was involved in an incident at Harrisburg Passenger Station shortly after

completing his 11:00 p.m. to 7:00 a.m. tour of duty on August 9, 1972. At approximately 7:30 a.m. two of Carrier's police officers were checking parking meters at the passenger station and discovered Claimant's automobile parked at an expired meter. As the officers were attempting to write up the car Claimant engaged them in animated terms objecting to the parking ticket. The officers testified that Claimant was profane and abusive and they attempted to place him under arrest for disorderly conduct, whereupon he resisted and they physically restrained him. Claimant denies that he used profanity or resistance until the officers tried to handcuff him.

Before proceeding to an evaluation of this claim, let us reaffirm the often stated jurisdictional parameters within which our Board functions in discipline cases.

A succinct statement of these principles is found in Third Division Award 13179, as follows:

"In discipline cases the Board sits as an appellate forum. As such, our function is confined to determining whether:
1) Claimant was afforded a fair and impartial hearing;
2) The finding of guilty as charged is supported by substantial evidence; and 3) The discipline imposed is reasonable."

Petitioner, in behalf of Claimant, ably argues procedural objections regarding the scope of the investigation and the introduction of past discipline records, citing Awards 4684, 11130, 11308 and 12815. (Third Division). Upon careful study of the cited authority and the instant record, however, we conclude that the principles developed therein have no application here.

Each of the cited cases involved a record deficient or ambiguous on the issue of substantial direct evidence to support the charges. In these circumstances the unqualified introduction of a negative past discipline record was used improperly to resolve, by inference, the question of guilt or innocence of the proffered charges under investigation. In our judgment there is no such ambiguity or deficiency on this record and substantial evidence independent of the past record supports the finding of Claimant's culpability. Accordingly, the introduction of past discipline records in this circumstance cannot be held prejudicial or unfair. See Awards 1086 (Fourth) 18632 (Third) et al.

We find that Claimant was afforded a fair and impartial hearing; that substantive record evidence supports the findings of that hearing; and that the discipline assessed was not, given the nature of the offense and Claimant's past record, arbitrary or unreasonable. Accordingly, we have no alternative but to deny the claim.

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Award No. 6798
Docket No. 6626
2-PCT-EW-'74

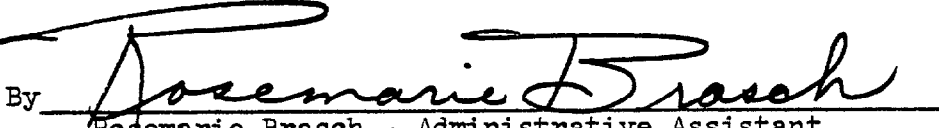
A W A R D

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 3rd day of December, 1974.