

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. 91, Railway Employees'
(Department, A.F.L. - C.I.O. - Carmen
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- 1 - That the withholding of Carman C. F. Helton from service effective May 8, 1973, and his subsequent dismissal on September 7, 1973, were improper and in violation of the current agreement, and
- 2 - Accordingly, the Louisville and Nashville Railroad should be ordered to -
 - (a) Restore him to service with seniority and all other employee rights unimpaired.
 - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
 - (c) Pay all premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld from service.

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.

Claimant was dismissed from Carrier's service, following an investigation, for his "horseplay" during working hours which resulted in his fatally shooting a fellow employe. It is noted that Claimant was convicted of involuntary

manslaughter for this incident and sentenced to five years in the penitentiary, which was subsequently changed to probation under supervision for the entire period. There is no dispute with respect to the facts and circumstances leading to the tragic accident. Also, there is no allegation that the investigatory hearing was improperly or unfairly conducted.

Petitioner's position throughout the entire handling of this dispute was that the penalty imposed by Carrier for this incident was too severe and was in fact extremely harsh and unjustified. In support of this position the Organization cites the personal tragedy suffered by Claimant as a result of the accident. It is also argued that the twenty years of service of Claimant should have been considered and that "misdemeanors do not require life sentences".

There is no doubt that Claimant violated at least the Safety Rules promulgated by Carrier in his horseplay with the two guns and this is not disputed. It is also undisputed that Claimant's actions resulted in the loss of life of another employee, one of his friends. We do not consider this type of horseplay, even without fatalities, to be a minor rule violation as contended by Petitioner. In fact we have held that the mere possession of firearms while on Carriers' premises justifies Carrier's act of dismissal (see Award 6479 and Third Division Awards 20199 and 20673).

It is so well established that it may be considered axiomatic that this Board is precluded from substituting its judgement for that of the Carrier in disciplinary matters unless Carrier's action is so arbitrary or capricious as to constitute an abuse of discretion. In the case at bar Carrier's penalty is amply justified by the record.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of September, 1975.