

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
(  
( The Baltimore & Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employees:

1. That Machinist Timothy P. Lowery and Machinist Helper Antonio S. Rodriguez were unjustly dismissed from the service of the Carrier on December 6, 1974.
2. That Machinist Lowery and Machinist Helper Rodriguez be paid for all time lost by each of them at his applicable rate of pay for the date such time was lost, including his fair share of overtime, beginning with November 16, 1974 (date of first loss due to being held out of service pending result of investigation) and continuing until they are reinstated to service. Further, consider this a request for immediate restoration to service with all seniority rights unimpaired, with credit toward vacation eligibility for all time unjustly held out of service; also, the continuation of health and welfare benefits under Group Policy GA-23000 for all time held out of service or reimbursement for medical expenses incurred during such time that would have been covered by that Policy by virtue of their continued employment; also, any and all other benefits that would have accrued to either of them by virtue of continued employment in order to make them whole.

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 T. P. Lowery, a Machinist and Local Chairman of the Machinists' Organization, and Claimant A. S. Rodriguez, Machinist Helper, were regularly assigned on the 12 midnight to 8:00 A.M. shift at Carrier's Barr Yard. The Claimants were dismissed from the Carrier's service on December 6, 1974,

after being charged and tried for the offense of being under the influence of intoxicants and conduct unbecoming employees on November 15, 1974.

The Organization contends that the charge was not precise; that the conducting officer denied the Claimants a fair hearing and that the evidence did not support a finding of guilt and was an arbitrary, capricious and vengeful act by management because of Local Chairman Lowery's vigorous and forceful prosecution of safety hazards.

We find that the charge against the Claimants was adequately precise in describing the circumstances of the dispute and the time, date and nature of the event in question so as to allow them to prepare their defense.

We find that the record does not disclose any irregularities on the part of the conducting officer which could be said to be prejudicial to the outcome of the Claimants' case. We caution that the parties should be allowed considerable latitude in cross-examining witnesses, in seeking to challenge credibility, as well as in seeking to reveal conflicts in testimony. And, certainly all objections must be made part of the record.

We find that there was substantial evidence in this record to support the charges and the Carrier's finding of guilt against both Claimants. However, we find that the discipline of dismissal in this case is excessive. We order that the Claimants be restored to service without back pay, but with all other rights unimpaired.

A W A R D

Claim sustained as per findings.

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 5th day of April, 1977.