

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

Parties to Dispute: { System Federation No. 4, Railway Employees'
{ Department, A. F. of L. - C. I.O.
{ (Carmen)
{
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That accordingly Michael G. Gardner was unjustly dismissed from all service of the Chesapeake and Ohio Railway Company effective December 2, 1974 as a result of investigation held in the office of General Foreman, Flint, Michigan, November 13, 1974 at 2:00 P.M.
2. That accordingly the Chesapeake and Ohio Railway Company compensate Carman Michael G. Gardner his applicable straight time rate of pay, from December 2, 1974 until restored to service.
3. That accordingly Carman Michael G. Gardner be restored to his former position with seniority rights unimpaired and made whole for pension benefits, health and welfare benefits, insurance benefits including Railroad Retirement and unemployment insurance, also all other benefits he would have if he remained in 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 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 waived right of appearance at hearing thereon.

Claimant Michael G. Gardner was employed as a Carman on the Carrier's property at Flint, Michigan. On November 8, 1974, Claimant was notified that he was to appear at an investigation on November 13, 1974, on the following charge:

"You are charged with falsely claiming an injury while on duty at 1:00 P.M. on Tuesday, November 5, 1974."

Following the investigation, the Carrier notified the Claimant that he was found guilty as charged and that he was dismissed from the service of the Carrier.

The record indicates that the Claimant was properly notified and received a proper charge. He was very ably represented and was given the opportunity to fully present his case. We find that the hearing was fair and impartial. We find that the Carrier has met its burden of proof in that substantial evidence of record supports the Carrier's finding of guilt. We find, however, from the narrow circumstances of this record that the discipline of dismissal is excessive. The Claimant shall be reinstated with all rights unimpaired but without back pay or any other back economic benefit.

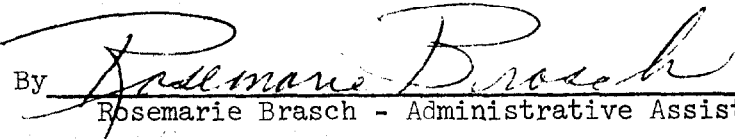
A W A R D

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of July, 1977.