

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: { System Federation No. 99, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 {
 { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That Laborer D. R. Wilkins was unjustly dismissed by the Illinois Central Gulf Railroad on November 27, 1975 following an investigation held on November 26, 1975.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to reinstate Laborer D. R. Wilkins and that he be paid for all time lost, with restoration of full seniority and all benefits he would have been entitled to.

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 employees 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.

The claimant is a short service employee who was dismissed for insubordination to the General Foreman on November 19, 1975. He was notified by letter of November 19, 1975 that a hearing would be held on November 26, 1975 which was done. Thereafter, on November 28, 1975, he was notified by letter that he was dismissed. The claim was progressed on the property to the carrier's highest designated officer.

The essence of this claim is that claimant was denied a fair and impartial hearing under Rule 11 of the agreement in that he was denied the opportunity to cross-examine carrier's witness when he had reserved the right to represent himself along with the General Chairman. On his behalf the General Chairman had participated in the hearing and had a full opportunity to examine and cross-examine witnesses. The substantive question of insubordination was resolved at the hearing in that claimant as a witness admitted cursing the General Foreman over the telephone and, in effect, admitted threatening him with physical harm.

Before this Board certain other procedural objections were advanced, however, we take no cognizance of them insofar as they were not presented on the property. Under well established rules of this Board we lack authority to consider such questions at this level for the first time.

We are urged to follow the Award 7286 (Twomey) involving essentially the same parties, the same rules and a somewhat similar fact situation. We are mindful of the needs of stare decisis and we would be most reluctant to disturb the holdings of a prior award absent compelling error. Clearly, the purposes of the Railway Labor Act are effectuated when neutrals avoid inconsistent and conflicting interpretations of agreements. Award 6548 (Bergman).

The problem here is not with the reasoning and soundness of Award 7286. We are inclined to believe there is merit in the view although we might quibble under the circumstances here that the deprivation of claimant's right to cross-examine is not a "serious" error (See Award 5884 (Dugan)). We do believe the deprivation here was questionable. Absent some explanation by the hearing officer as to reasons for such denial of claimant's right to cross examine witnesses we see his action as rather high-handed, even arbitrary. Nevertheless, we still must face the question whether such procedural error was sufficiently prejudicial to undermine the entire hearing. As to that question, which we view as decisive here, we believe claimants full and complete admission of the facts which formed the basis for the charges of insubordination distinguishes this case from Award 7286. The purposes of the Railway Labor Act cannot be served where an employee openly admits misconduct and then seeks to absolve himself because of an error which at best was not prejudicial.

Insubordination is a serious offense in this industry as numerous awards of this Board have held. Accordingly, under all the facts we do not see the discipline imposed here as arbitrary, capricious or unreasonable and the claim is denied.

A W A R D

Claim is 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 21st day of March, 1978.

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MAY 4 1978 LABOR MEMBER'S DISSENT TO

J. W. GOHMANN AWARD NO. 7484 - DOCKET NO. 7269

The majority erred in this Award when it failed to consider the seriousness and the consequences involved by denying an individual the right to a fair and impartial hearing. Numerous awards of this Board for years have stressed that Claimants are entitled to a fair and impartial hearing. The Board's past decisions on this basic right are not unique, as such a concept is considered the "American Way" and has long been upheld by the highest tribunals throughout this country. To conclude that it is not a serious error to deny an individual such a basic right even though the Award indicates that this deprivation was "questionable" and that such an action was "high-handed, even arbitrary," is in direct conflict with the intent of the Railway Labor Act and the basic tenets of our society.



Don A. Hampton
Labor Member