

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: ( System Federation No. 106, Railway Employees'  
( Department, A. F. of L. - C. I.O.  
( (Electrical Workers)  
(  
( The Washington Terminal Company

Dispute: Claim of Employees:

1. That under the current agreement Electrician Clyde R. Broadus, Jr., was unjustly dismissed from the service of The Washington Terminal Company by notice letter dated June 13, 1975, subsequent to unfair hearing proceedings, conducted on June 5, 1975.
2. That, accordingly, the Washington Terminal Company be ordered to restore Electrician Clyde R. Broadus, Jr. to the Carrier's service with seniority and vacation rights unimpaired and paid for all service time lost.

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.

This is a discipline case. Claimant was charged with being insubordinate, assaulting his supervisor, using obscene language, and damaging a portable radio belonging to Carrier. All of this occurred on the evening of May 27, 1975. As a consequence Claimant was taken out of service that same evening. Claimant was formally charged by notice dated May 30, 1975 (a Friday) and received by Claimant the following day (certified mail). Claimant was ordered to appear for hearing the following Thursday, June 5, 1975. On Monday, June 2, 1975 the General Chairman received notice of the hearing. A request for postponement was made by the General Chairman since he was very recently and unexpectedly appointed. The request was denied because the foreman was on his assigned day, Claimant's immediate supervisor was on vacation and was being called back for the hearing, and that Claimant was out of service.

On Thursday, June 5, 1975 the hearing commenced as scheduled. Claimant was represented by his General Chairman and the President of his Local. All three stated they were prepared to proceed and that a fellow employee was present to present testimony on Claimant's behalf.

During the hearing the General Chairman and the Local President participated fully and conducted extensive direct and cross examination. Just prior to the conclusion of the hearing the General Chairman stated:

"I would like to show in the record that, being the new General Chairman on the job, I did not receive this notice of the Hearing until Monday noon. I had two days to try to work up this Hearing. A postponement was asked for from Mr. Tillman. He told me directly there was no way possible that I could have a change.

I didn't have a chance to get proper witnesses. I didn't have a chance to hardly check with Mr. Broadus (Claimant.) Mr. Tillman said I would have a little time before the Hearing to discuss the case with him."

At the conclusion of the hearing Claimant stated that he had had a fair and impartial hearing, even though his representatives expressed reservations.

After carefully examining this record, with particular attention to the hearing transcript, the Board finds that Claimant was afforded a fair and impartial hearing, and that Carrier's action of dismissal was not arbitrary or capricious.

While three days preparation for a new General Chairman might appear to be too short a time and that a postponement might be warranted, the hearing record reflects that Claimant was represented vigorously and ably -- not only by the General Chairman but the President of his Local as well. This is clear indication that there was ample opportunity to prepare and present a proper defense.

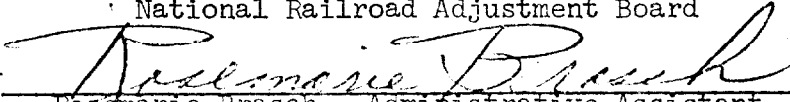
Accordingly, there is no basis, either on procedure or on the merits, for overturning the action taken by Carrier.

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 21st day of April, 1978.