

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( System Federation No. 76, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Car Inspector John A. Piller, Butler, Wisconsin, was unjustly dismissed from service on March 28, 1977.
2. Car Inspector John A. Piller was erroneously charged with failure to comply with instructions from trainmaster.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Car Inspector John A. Piller with his seniority unimpaired, reimburse him for all vacation rights, health and welfare and insurance benefits, and all benefits he would have been entitled to had he not been unjustly dismissed, as per Rule 35.

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.

Claimant was charged with "failure to comply with instructions from Trainmaster W. T. Lundell when you were instructed to provide yourself and wear a bump hat at Butler Yard while assigned as Car Inspector."

A properly conducted investigation was held, at which time it was testified that Trainmaster Lundell, during the week of March 1, 1977, noticed that claimant was not wearing his yellow bump hat. He advised the claimant that he should put on his bump hat and wear it while performing Carmen duties. Approximately one week later Lundell again noticed that claimant was not wearing his bump hat. The above noted charge resulted.

Claimant testified that the bump hat issued to him was broken. He further stated that he forgot about the subject. He did not talk to the foreman on duty about a bump hat but acknowledged that he should have.

Claimant further acknowledged that he did not wear a bump hat during the week in question but was able to secure one after being approached by Trainmaster Lundell on the second occasion.

While claimant's prior discipline record is far from exemplary, the Board finds that dismissal from service is excessive in these circumstances. The Board will restore claimant to service with service rights unimpaired but without pay for lost wages.

In granting claimant this opportunity, it is anticipated that the claimant will have learned the overriding necessity of complying with work-related instructions and that failure to do so again may well result in dismissal from service.

A W A R D

Claim sustained to the extent set forth in 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 7th day of February, 1979.