Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7857
SECOND DIVISION Docket No. 7657
2-RF&P-CM-'79

The Second Division consisted of the regular members and in addition Referee James F. Scearce when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Richmond, Fredericksburg and Potomac Railroad Company

Dispute: Claim of Employes:

1. That Carman-tentative, R. P. Flick was unjustly dismissed from the service as result of investigation held in the Master Mechanic's office on Tuesday, August 31, 1976, in violation of Rule 34; also Flick was dismissed from service in a very discriminatory manner.

2. Accordingly Carman-tentative, R. P. Flick is entitled to be reinstated to service with seniority rights unimpaired, compensated eight (8) hours each day, five (5) days each week, commencing September 9, 1976 at the Carmen's applicable straight time rate plus 6% annual interest, insurance for himself and family, all days accredited as qualifying days for vacation and all other benefits accruing to regular employes. Said claim to remain in effect until such time that Flick is restored to service with full seniority and the discrimination against him is discontinued.

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 were given due notice of hearing thereon.

Claimant was a Carman-Tentative of the Potomac Yard facility of the Carrier. Claimant was marked off-duty on June 13, 1976, due to an injury. On August 16, 1976 the Master Mechanic at the facility directed a letter to him to attend a hearing on August 24, 1976 relative to his failure to protect his assignment. Apparently due to a request from the Claimant, the hearing was re-scheduled for August 31 (although there is some indication the Claimant asked for a re-schedule to September 1). The Claimant failed to

appear at that hearing but was represented by an Organization official. The hearing, conducted by the Master Mechanic, was held in absentia, the Organization official testifying that the Claimant wished a doctor's letter made a part of the record, that the Claimant would not be present and offering no explanation as to why he could not attend, while indicating for the record that the Claimant had delivered the doctor's note to a local Organization official the night before.

The Organization contends that the hearing was improperly conducted, the Claimant was discriminated against and his dismissal improper. It points to prior Awards that affirm the position that the charging official in such cases were found to have conducted hearings in other than an objective manner. This can hardly be confirmed in this case, since the Claimant failed to appear at such hearing; additionally, nothing was adduced on the record that offered any alternative to the Carrier's position. The record makes it manifest that the Organization was not apprised of the Claimant's position, even though representing him at the hearing. We note that the hearing was rescheduled at the Claimant's request. It is well established that such deliberations cannot be successfully thwarted by the disinclination of the Claimant to appear. Whether or not such proceedings would have been improper, discriminatory or otherwise subject to dispute is problematic under the circumstances. Upon consideration of the record as a whole, we find no reason to upset the Carrier's action in this case.

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 28th day of February, 1979.