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JUN 4 1979

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7938
Docket No. 7731
2-C&NW-CM-'79

J. W. GOHMANN

The Second Division consisted of the regular members and in addition Referee Robert A. Franden 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 P. O'Connor was unjustly dismissed from service on March 11, 1977.
2. Car Inspector John P. O'Connor was erroneously charged with reckless driving and speeding on company property; failure to protect his assignment; and leaving company property for a time which he was being paid.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Car Inspector John P. O'Connor with seniority rights unimpaired, compensate him for all time lost at eight (8) hours per day, dating from March 11, 1977, until returned to service, as well as restore his contractual benefits and make him whole for any loss of benefits he may have suffered during the period he was unjustly withheld from 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 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 waived right of appearance at hearing thereon.

Claimant was dismissed from the service of the Carrier after having been found guilty of reckless driving and speeding on company property, failure to protect his assignment and leaving company property for a time for which he was being paid.

Claimant raised the procedural issue of the sufficiency of this notice as to the failure to protect his assignment charge. We find the Claimant's position in this regard to be without merit, in that the notice was sufficient to advise him of the offense with which he was charged.

The charges themselves were supported at the investigation by evidence of probative value. We are not able to resolve the conflicting testimony at this level. It has long been our position that we will not disturb the finding of the investigating body, if evidence was presented at the hearing sufficient to support the charge. Such was the case here.

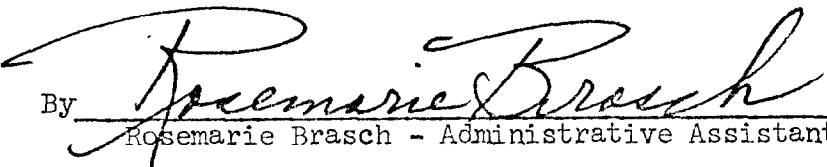
Given all of the circumstances of the present case however, the penalty of dismissal is too severe. The purpose of discipline will be well served if Claimant is restored to duty at the present time without compensation for time lost. Claimant should be offered his position and given 60 days to report for duty. If the Claimant fails to report for duty within 60 days, his right to reclaim his position under this award shall lapse.

A W A R D

Claim sustained in accordance with the 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 24th day of May, 1979.