

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

Parties to Dispute: ( James W. Bryant  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. Discipline dismissal of Electrician James W. Bryant by the Penn Central Railroad Company.
2. That, accordingly, the Consolidated Rail Corporation be ordered to reinstate Electrician J. W. Bryant to his former position with seniority rights unimpaired and compensated for all lost time.

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.

This case involves the discipline dismissal of Electrician James W. Bryant by the Penn Center Railroad Company for "insubordination, falsifying work reports, and refusing to leave Company property after being asked to do so by immediate supervisor and railroad police, on August 24, 1975; 8-21-75 ½ hour late; 8-22-75 1 hour late; 8-23-75 1 hour 45 min., late; 8-24-75 1 hr. 10 min., late;" and such notice of August 25, 1975 further states "you are hereby held out of service until further notice."

Claimant Bryant, age 39, an employe of 11 years standing, held a regular 11 P.M., to 7 A.M., assignment at the Carrier's 59th Street Engine House in Chicago, Illinois. On Sunday, August 24, 1975, claimant Bryant not having arrived for his job after 12:00 midnight, Carrier called (at 12:30 A.M.) in Electrician D. T. Keiner to work the vacancy. The late arrival of Mr. Bryant left Carrier with a dual occupancy and at 1 A.M., there was a confrontation between Foreman Brown and Electrician Bryant which ultimately resulted in Claimant Bryant's being escorted from the carrier company property by the company police.

The notice letter of suspension of August 25, 1975 was followed the same day by a notice of trial the date being set for August 28, 1975. After a number of postponements the trial was held September 22, 1975 and some time subsequent to the trial proceedings on September 22, 1975, Claimant Bryant was notified of his dismissal on an undated notice form.

Rule 7-A-1 provides that appeal from discipline must be made in writing by the employe or on his behalf to the Superintendent Labor Relations, within 15 calendar days after receipt of written notice of dismissal. Carrier stoutly insists this Board lacks jurisdiction because an appeal was not perfected and that Claimant has no rights to have the case heard on the merits on appeal.

The Record shows that Claimant J. W. Bryant signed a notice dated 11/7/75 addressed to H. E. Stevens, General Foreman, and R. S. Hauth, Master Mechanic, at the 59th Street Engine House, and that a separate notice, undated, addressed to Mr. S. D. Dutrow, Superintendent, Labor Relations, to whom the notice of appeal was required by the rule to be given, was handed to Mr. Tony Steigler by Claimant (intended for Dutrow). Carrier has filed an elaborate, comprehensive, well-argued case that this Board lacks jurisdiction to hear this appeal because the notice of appeal was not timely given. The Carrier admits that the appeal letter written to the General Foreman and Master Mechanic was received by them. The Claimant, in the handling of his separate notice of appeal to Mr. S. D. Dutrow, Superintendent Labor Relations (the person to whom the appeal was required by Rule 7-A-1 to go), gave it to Mr. Tony Steigler and told him to send it through the Company mail and contends it went through the RRS (Railroad Mail Service). Mr. Dutrow states that he never received the notice. Steigler, who was Secretary of IBEW Local 1831 at the time, stated on oath that Bryant handed him the notice on Nov. 7, 1975 and that he, Steigler, sent the notice to Mr. Dutrow through the Company mail drop at the 12th Street Yard. Carrier states that it was totally unrealistic for Claimant to trust his mail to somebody else to mail it for him through the unreliable railroad mail service. Due to the fact that notice of appeal was timely given by Claimant to the Secretary of the Local Electricians' Union, to be sent through the railroad mail service to Mr. Dutrow, that the notice of discipline is undated, and the time at which it was imposed between the date of hearing, September 22, and the date of Claimant's attempted notice of appeal of November 11, 1975, is uncertain, we hold that the record is insufficient to require us, as a matter of law, to hold that the Board has no jurisdiction to consider the merits of the case, and that as a matter of law, the appeal was not perfected.

While the evidence is unclear as to the notice and there is no clear and compelling proof that the notice was properly or adequately given, there is evidence that Claimant was attempting to give written notice within the fifteen day time limit we will resolve that doubt in favor of the Claimant. Rule 7-A-1 does not require that notice of appeal be either hand delivered or that the appeal must be sent by registered or certified mail as in the case of certain Court Rules. The Claimant contends that his notice of appeal was submitted to three officers - supervisors of Carrier, within nine days after the alleged date of the undated G 32 disciplinary action was submitted to him. We will proceed with the merits of the case.

Both the Carrier and the Claimant strongly argue respectively that there was, or was not, insubordination. The Claimant contends that there is no record to support the dismissal of the man with 11 years service. Rather than base the decision on the arguments of the parties, or pull out individual sentences from the testimony to support a position taken, we believe that a clearer picture of the entire events of that night would be gained by quoting at this point the statement by Gang Foreman Brown with whom Claimant had his first altercation after arriving late on the job, and then quoting the statement of the Sergeant of the Penn Central Police as to what happened after he received a call for aid and went to the locomotive inspection area in the 59th Street Station.

The statement of Gang Foreman Brown is as follows:

"I was coming up from the pit and saw Mr. Bryant go between tracks #2 and #3. I met Mr. Bryant and told him he could not work that night because I called in another electrician. I told him that I didn't know if he would get paid for the time he had been there. I told him he would have to go see his Union man or Mr. Stevens in the morning. He then said that I was interfering with his beans, and I told him I couldn't do anything about that. I took for granted that he was going home, as his car was parked at the pit. I checked the time and then went out the south door because my laborer was sitting and waiting for instructions. When I returned to the shanty I saw that Mr. Bryant was behind the desk signing off work reports. I told him he couldn't sign off any work reports because he hadn't even looked at the units and I reminded him again that he wasn't on duty, that he was supposed to leave. He told me that was his job and he wasn't going to leave unless he had some witnesses to prove that he was forced to leave.

Then I reached across the desk and picked up the work reports that he was signing and rolled them up and put them in my pocket. That was about 1:20 A.M., because ULG 39 was already on the pad. Mr. Bryant told me that I couldn't send him home, that I didn't have the authority to send him home. I stood at the steps and he told me to (vulgarity omitted) at which time I pulled out my radio and called Mr. Horgan and told him to call the railroad

"police. I stood beside the building and told my electrician, D. Kiener, not to get on the engine. We waited about 10 or 12 minutes before Mr. Horgan and the railroad policeman came. They asked me where was the man I was having trouble getting off the property, and I told them that he was in the shanty but I believed he was now on one of the units. So Mr. Horgan, the railroad policeman and I walked over to the tracks and watched Mr. Bryant jumping from the second to the third engine and the policeman asked him to come down. He asked him to come down about 5 times before he even got any response out of him. Mr. Horgan asked him was he on duty, even though he knew he wasn't, and he asked him did he make out a time card. Then he explained to Mr. Bryant that he was told not to work two electricians on the same job and that another man was already working on his job. The policeman again told him to leave the premises, and he told the policeman that he was not leaving until he got some witnesses. Then Mr. Bryant started waving his flashlight, that he had in his hand, around and the policeman told him that he would have to leave the Company property now, or he would have him forcibly removed in handcuffs. After a few more choice words from Mr. Bryant, he went to his car and left, but not before saying that he was going to (vulgarity deleted) Mr. Horgan and myself and that he knew just how to do it too."

The altercation of the Claimant with Gang Foreman Brown resulted in the calling of the Penn Central Police; the railroad policeman called was Thomas C. Balcius, Sergeant of Penn Central Police, 32 years of age, employed with the Penn Central police for nine and a half years. His initial statement of what happened is as follows:

"At approximately 1:20 A.M., I received a radio communication from my headquarters to come to the enginehouse, that they were having trouble with an employe. Upon my arrival I spoke with a Mr. Horgan who advised me that a Mr. Bryant, electrician, came late to work and was asked to go home due to the fact that another employe was called in to fill his job. Mr. Horgan showed me a sign-in book where Mr. Bryant had signed in at 12:40 A.M. I questioned Mr. Horgan as to what his starting time was. He advised me it was 11:30 P.M. Mr. Horgan then told me to see Doc Brown who informed me that Mr. Bryant was instructed to leave the property, that another gentleman was called in to take his place. He also related to me that he observed Mr. Bryant signing locomotive inspection reports and that he had not did any inspections on those engines. I asked him where Mr. Bryant was and he advised me that he was on an engine at the fuel track. Mr. Horgan and Mr. Brown accompanied me to the engine that Mr. Bryant was on. I called to Mr. Bryant by name, advised him I was a Company police officer and to please come down off the engine. He did not do so. At this time I advised him what the gang foreman had tole me. Then Mr. Bryant stated to me that he was not going to go home. I informed him that he had a right to his grievances

"if there was any discrepancy as far as him working. He became very agitated with Mr. Brown and Mr. Horgan when I asked him to leave the property; he flatly refused. He said this was based on his coming in late. I then asked him to leave and that he was technically trespassing on company property, and as an officer of the company I would have to see that he left the property.

He then made statements to me concerning the fact that he already had a lawsuit against the company and that he was going to (vulgarity deleted) the company again. I sent away the two gang foremen and instructed Mr. Bryant verbally and forcibly that he would have to leave the company property. He said that he was going to get a witness and came down and made a call on the company phone. I advised him again that he was trespassing and that if he would not leave I would effect an arrest. After that we started walking to where his car was parked, then he remarked that no one was going to tell him what to do, that God was going to be the only one. At this time he said that Mr. Brown had pushed him in front of a desk in the office. I asked him if he was hurt and he said that he was not and left the property at 1:40 A.M. I then completed my investigation by an inspection of the work reports for company records as Mr. Brown agreed, and I initialed and dated those records as such because I knew they could be used as evidence. I then went to the sign-in book and reported the date and time he reported for duty. This information was reported to my office.

- Q. Mr. Balcius, did Doc Brown and Mr. Bryant have any words while you were there?
- A. After my announcement to Mr. Bryant as to my capacity on the railroad and to depart the premises, Mr. Brown called out to him that he would not be needed and that he had called in someone else.
- Q. Did Mr. Bryant refuse to leave the first; second, and third time you asked him to?
- A. Yes.
- Q. You were wearing a uniform, weren't you?
- A. Yes, sir.
- Q. When you saw Mr. Bryant, was he on top of a unit?
- A. Yes sir, I observed him crossing from one engine to another.

"Q. Did you notice any signs of him being hurt?

A. No sir.

Q. You say Mr. Bryant did not leave until you threatened him with arrest?

A. That is correct."

There was extensive cross examination of these and other witnesses and a claim by Bryant that Gang Foreman Brown had pushed him down and injured him in taking the work reports away from Claimant.

The basic contention of Claimant Bryant is that after 11 years of service, dismissal under these circumstances is harsh and unreasonable. We might agree with the Claimant if his misconduct that night was an isolated personal affair calculated only to affect himself and his relations with his immediate superior, Brown. However, the matter is far more serious than that, as Claimant was jumping from engine to engine and signing work reports before he had been on the engines. Falsifying the work reports was a major action that could have had very serious consequences, if they had been believed and no further inspection had been made. Loss of life, or damage to property could result when an engine in need of repairs went back into service without the performance of necessary repairs. "In this case, electrician Kiener had to replace a dynamic braking circuit which Claimant said he serviced but in actuality had not."

The National Railroad Adjustment Board has often held that the seriousness of an offense and the tragic events that may have resulted therefrom are the proper measure of discipline. Many cases have been cited and argued by the parties, the Claimant contending that the record quoted above does not show insubordination, the Carrier that it does show insubordination; the Claimant contending that the matter was too minor to justify dismissal after 11 years of faithful work; the Carrier contending that the insubordination, falsifying of work reports, late appearance for work, that the discipline assessed was entirely justified and that the claim should be denied.

We are unable to say in the light of this record, a portion of which we have quoted above, and the many questions and other facts pulled out with elaborate cross examination by able representatives of both the prosecution and the defense, that the judgment reached was unreasonable or not supported by substantial evidence in the Record.

Believing that there is substantial evidence in the Record to support this sentence, harsh though it may seem, we feel that there are insufficient grounds for us to hold that it was capricious or unreasonable as contended by the Claimant.

A W A R D

Claim denied.

Form 1  
Page 7

Award No. 8015  
Docket No. 7501-I  
2-CR-I-'79

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 1st day of August, 1979.