

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: ( System Federation No. 6, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Baltimore & Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employees:

1. That as a result of an investigation held on Monday, September 19, 1977 Carman James E. Bailey was dismissed from the services of the Baltimore & Ohio Chicago Terminal Railroad Company effective September 29, 1977. Said dismissal is in violation of Rule 26 of the current working agreement as well as being arbitrary, capricious, unjust, unfair and unreasonable.
2. That the Baltimore & Ohio - Chicago Terminal Railroad Company hereinafter referred to as Carrier, be ordered to reinstate Carman James E. Bailey, hereinafter referred to as Claimant, to the services of the Carrier with seniority and all other rights unimpaired, in addition to compensation at the pro rata rate for eight hours for each day that Claimant is withheld from service since September 29, 1977 until such reinstatement is in effect.

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, James E. Bailey, a Carman was dismissed from service of the Carrier for insubordination effective September 29, 1977, following an investigation held on September 19, 1977. Claimant was adjudged guilty of refusing to perform work assigned by his Supervisor during his tour of duty on September 4, 1977.

Claimant was directed by his Foreman to drive the R-6 Truck out to the work lead so as to use the R-6's welder to weld a carrier iron. Claimant, according to testimony given by the Foreman and several other Carmen,

protested the assignment and began yelling at the Foreman. Claimant entered into an argument with the Foreman saying he wasn't going out to the work lead to weld because it wasn't his work. Furthermore, Claimant protested he could not drive the R-6 Truck as instructed because he did not have a driver's license. Claimant then allegedly walked away from the Foreman and headed for his tool box. The Foreman, according to his own testimony, then told the Claimant that if he didn't want to work he should go home. Claimant responded he was going home as he just got sick!

Upon a close and careful review of the record, the Board determines that Claimant did receive a fair and impartial hearing. The Board finds the evidence substantial and convincing with regard to Claimant's conduct on the date in question, September 4, 1977. Claimant was clearly insubordinate toward his Supervisor when he assumed an argumentative posture and vociferously refused to perform the specific duties of driving the R-6 Truck and welding the carrier iron on a car located on the work lead.

However, in view of all the surrounding circumstances in the instant case, the Board believes Carrier's action of dismissal may have been excessive and therefore we are inclined to invoke leniency. This action does not in any way negate nor diminish the Board's strong impression that Claimant acted wrongly under the circumstances and that his conduct was unacceptable. In giving Claimant another chance we caution him to protect his assignment by keeping his temper under control and his unjustified complains to himself. If Claimant believes he has been dealt with unfairly or unjustly he may exercise his rights to recourse under the grievance procedure provided for in the Controlling Agreement. We cannot impress upon the Claimant enough the obligation he has simply to do his work as so instructed by his Supervisors.

A W A R D

Claimant is to be reinstated without back pay but with seniority and all other rights unimpaired as the time off between his dismissal and reinstatement shall serve as his discipline.

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 19th day of December 1979.