

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. The Carrier improperly dismissed Fred D. Sias, Jr., Machinist Helper, Chicago, from service effective December 13, 1977.
2. The Carrier compensate Fred D. Sias, Jr. for payment of all wages lost while suspended from service during the period October 31 through December 13, 1977, inclusive, and while dismissed from December 13, 1977 to present, and for other benefits during this period, including credit for time lost during this period for vacation and other rights.

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, Mr. Fred Sias, was directed by note dated October 31, 1977, to appear for a formal investigation on Monday, November 7, 1977, "to determine his responsibility in his action in shooting C & NWT General Foreman Maurice J. Broderick at approximately 7:50 A.M. Friday October 28, 1977 which shooting occurred at or in the vicinity of the 40th Street Shops, Chicago, Illinois."

The investigation was postponed at the request of the Organization pending claimant's release from incarceration by the court. Eventually, it was scheduled and held on December 6, 1977.

The investigation was conducted in accordance with statutory requirements and past practice. Following the appropriate conducted investigation the action herein complained of was taken by the Carrier on December 13, 1977.

The record reveals that on October 28, 1977, Mr. Broderick was leaving the property at the end of his shift at approximately 7:50 A.M. At the stairway leading from North Western's property to a public sidewalk he encountered an individual whom he positively identified as Mr. Sias. Broderick testified that there was a brief discussion regarding some problems and he suggested that they both return to the office to review the matter with another company official. This the assailant agreed to do. The witness also stated that he started back up the steps to return to the office and "turned around to see where Mr. Sias was and he's pointing a gun at me and shot me in the left cheek causing nerve damage and paralyzing my left vocal cord. Also I grabbed myself and turned around and he shot me again in the left buttocks causing damage to my hip bone." The assailant then ran down the stairs and disappeared. Mr. Broderick returned to the office for help. Two witnesses testified that when Mr. Broderick returned to the office and they inquired with respect to what happened they were separately informed by him, "Fred Sias shot me."

Mr. Broderick was a foreman that claimant has worked under for some time and was well known by him. It is difficult to believe that he would not recognize the claimant under such conditions. Mr. Broderick's statements while in a state of semi-shock after the shooting buttress his identification. Further, several days later Mr. Broderick picked out a picture of Mr. Sias as his assailant from among a group shown him.

The Organization counters the identification with the testimony of one witness. A machinist's helper testified that he saw Mr. Sias at a location somewhat distant from the shooting scene at approximately 7:50 A.M. However, under questioning the witness admitted that he had no contact with the claimant and did not know him personally. He had seen him infrequently since coming to work approximately four months before the shooting. He did not speak to him on the date in question and had never had any verbal communication with the claimant. He just somehow knew it was Mr. Sias. Further, he testified that there were other people in the vicinity who could have observed claimant's presence. There is no testimony that anyone other than this one witness identified the claimant as being in a location apart from the shooting. Such testimony standing alone and from a stranger to the claimant is simply not credible.

From the foregoing and the entire record this Board determines that the Carrier has sustained its burden of proof and the discharge was within its legal rights.

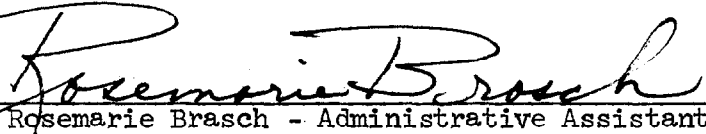
A W A R D

Claim denied.

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 25th day of June, 1980.