

The Second Division consisted of the regular members and in addition Referee Francis M. Mulligan when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer T. Janiszewski was unjustly dismissed from service of the Carrier following trial held on November 24, 1980.
2. That, accordingly, the Carrier be ordered to make the aforementioned T. Janiszewski whole by restoring him to Carrier's service with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of 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, T. Janiszewski, laborer, was employed at the Gibson Engine House, Gibson, Indiana, for Carrier, Indiana Harbor Belt Railroad Company, at the time of his discharge. Prior to his discharge, T. Janiszewski had been in the employ of the Carrier approximately two and one-half (2½) years. He was discharged for pilferage of gasoline on November 16, 1980 at approximately 11:25 p.m. Claimant appeals on several grounds including the basis that the trial held November 24, 1980 was not a fair and impartial trial as required by the terms of the controlling agreement.

In the case of the Claimant, the evidence produced against him was circumstantial. This does not mean the evidence was not of such a quality that under proper circumstances, his termination would not be effective. However, another issue in the matter is whether or not the trial was conducted in a fair and impartial manner. Basically, if proven, the Claimant is being terminated for stealing less than Six and no/100 (\$6.00) Dollars worth of gasoline. Needless

to say, the Claimant vehemently denies pilfering any gasoline and in fact, he testified that he purchased the gasoline at a service station off of the company premises. The record will indicate that Claimant was not given an opportunity to have questions read back that Claimant desired to have read back. In addition, the hearing officer made some judgments on the record regarding testimony presented which judgments were adverse to the Claimant.

Finally, there is a contention that the hearing officer, prior to the hearing, told the Claimant that he was as good as fired. In addition to all of the above, Carrier sets forth the position that the appeal was untimely. The dismissal letter is dated December 4, 1980 and the appeal of International Brotherhood of Firemen and Oilers is dated December 20, 1980. There is no evidence in the record as to when the letter of December 4, 1980 was sent or received. Basically, the record does not substantiate the issue of lack of timeliness in a clear and convincing manner. As was stated in Award No. 8367 (Wesley A. Wildman, Referee):

"This Board has read and considered at length the numerous (and sometimes conflicting) decisions discussing the problem of that point at which the multiplicity of roles played by a hearing officer in a discipline or discharge case becomes prejudicial to the interests of a claimant and precludes a fair, just and adequate hearing. Wisely, we think, a clear majority of these cases, in assessing whether minimally adequate due process was present or not, look for tangible and specific relationship between the multiplicity of roles played by the hearing officer and any prejudicial impediment to Claimant's defense which did, in fact, or probably did in fact, occur."

In this case, the Claimant did not receive the quality desired.

A review of the entire record does not convince us that Claimant is without guilt in this matter. However, the conduct of the trial was less than desirable. Claimant is to be reinstated without back pay.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

Rosemarie Brasch
By
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of May, 1983.