

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. The Baltimore and Ohio Railroad Company arbitrarily and capriciously dismissed Equipment Repairman (Machinist) J. M. Cantlebury from service following investigation held June 12, 1980.
2. Accordingly, J. M. Cantlebury should be restored to service with seniority unimpaired, compensated for all time lost, and credited with all benefits lost account of his unjust dismissal.

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 employes 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.

The Claimant, an Equipment Repairman assigned to Newark, Ohio, was dismissed on June 23, 1980, following an investigation, on charges of insubordination; absence from his assignment without permission; and falsification of his time sheet.

The charges were based on a strange and unusual episode that took place at the Claimant's residence on May 16, 1980. The details are undisputed.

The Claimant and his co-worker, before returning to the shop, drove in the company truck to the home of the Claimant so that he could obtain money he needed for his lunch. The Claimant told the co-worker to park the truck in the driveway and not to move it from there. He explained that he was "impounding" the vehicle because he had not received his expense account money from the Carrier. The Claimant then called his supervisor by phone and declared that he was "impounding" the truck and would not return to work, as expected, unless the Carrier sent a taxicab to pick him up at his home. His repeated refusal to release the truck and return to work brought to the scene his supervisor, a member of the company police force, and a sheriff's deputy. He explained to the sheriff's deputy that the truck had to be impounded and removed because it was parked on his property against his wishes. This

he clarified by saying that he was compelled to drive to his home for lunch money which he would not have needed if the Carrier had paid what it owed him on his expense account. After resisting further efforts to persuade him to relinquish the truck, the Claimant announced that he was not actually holding the truck but was simply voicing a protest against its presence on his property. He thereupon released the vehicle and returned in it with his co-worker to the shop.

The incident lasted about two hours, and the two employes performed no work for three hours. The Claimant filled out his time sheet for eight hours. It appears from the record that the Carrier owed the Claimant several hundred dollars on unreimbursed expense accounts.

The Organization has sought to support the claim on the ground that the dismissal violated principles of fairness and equity. Its position is that the Claimant should not be made to bear the blame for his conduct, or to suffer any penalty, because the Carrier provoked the episode by causing the Claimant financial hardship that drove him to the extreme behavior.

Moreover, the Organization contends, the Carrier deprived the Claimant of his right to attend and participate in the investigation when, in further disregard of his hardship circumstances, it held the investigation 30 miles from the Claimant's headquarters and refused to provide him with transportation and a noon meal. The Organization also challenges as unfair the denial of the request for a postponement made by the Organization representative upon discovering the Claimant's absence at the commencement of the investigation. The gravest act of unfairness, the Organization concludes, was the compounding of his financial distress by depriving him of his job.

The Board concludes that the claim cannot be sustained on this record under general rules of proof and established principles of the National Railroad Adjustment Board. The substance of the charges has been fully established by the Carrier and is undisputed by the Organization. Thus, unless the Organization's affirmative defense has been supported by persuasive evidence, the charges must be sustained and the claim dismissed. The Organization has not, in our opinion, made a convincing defense.

The Claimant may well have acted from a strong sense of frustration about the delayed reimbursement of money due him. There is an acknowledgment from his supervisor that the Claimant had a "long standing" problem with reimbursement of his expense money. Whatever the background facts of the problem may have been, however, we find no good reason to excuse the Claimant and to blame the Carrier for the senseless and bizarre way he chose to make his protest. He had a rational alternative. The right way to express his dissatisfaction and to seek remediation was available to him through the orderly system of justice provided by the contractual grievance procedure. The record affords no clue as to why he did not take that route until the Organization did so in his behalf after the dismissal.

Furthermore, there is no acceptable basis for invalidating the investigation on the grounds asserted. The Claimant's right to a fair hearing was not violated. He had adequate advance notice and a reasonable opportunity to attend. The site of the investigation, although not at the Claimant's headquarters, was on company property at a distance within his reach. Nor can we find that the Carrier prevented him from attending. The Carrier had no contractual obligation to persuade him to attend or to pay for his travel to the site or to provide him with a meal. There is no reason to believe that, unlike the other attendants from his headquarters, the Claimant was unable to obtain a ride or provide for his own lunch. In the Board's view, his refusal to go may fairly be interpreted as a further act of protest on his part, performed with awareness of the possible harm he might be doing to his case. In the circumstances, the complaint of prejudice from the failure to postpone the investigation has little meaning.

As each of the offenses charged and proven is considered sufficiently serious in nature to warrant discharge, we must find the penalty to be reasonable and beyond review by this Board. The dismissal must stand.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1984.