

Award No. 11238

Docket No. TD-12666

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Southern Railway Company, (hereinafter referred to as "the Carrier"), violated the currently effective Agreement between the parties, Article 10 thereof in particular, by its action in withholding and dismissing Train Dispatcher H. B. Chadwick, Jr., from its service; which action was arbitrary, capricious, in abuse of managerial discretion and based on charges not supported by the evidence of record.

(b) The Carrier shall now compensate the individual claimant for all wage loss sustained by him from March 24, 1960, until November 29, 1960, upon which date Claimant Chadwick was restored to the Carrier's service; and that Claimant Chadwick's employment record be cleared of the charges here involved.

OPINION OF BOARD: On or about 11:00 A. M. on March 24, 1960, Carrier's Train No. 57 was derailed. When this situation came to the attention of the Superintendent, he discussed the situation with both the chief dispatcher and the Claimant.

The Superintendent instructed him that a single track operation be set up between Altavista and Gretna. This discussion occurred between 11:20 A. M. and 11:30 A. M.

About 12:30 P. M., the Superintendent called the Claimant and inquired as to whether Claimant had set up the single track movement and the Claimant replied in the negative for he believed that the Superintendent's action was unsafe, and he asked to be relieved.

The Claimant was charged with leaving without sufficient reason, for violating Rule 703 failure; to comply with instructions.

We cannot find anything in the record that would indicate that the Carrier acted in an arbitrary and capricious manner. The burden of proving such rests upon the Claimant.

The Claimant claims that he was denied due process, because one of the reviewing officers testified against him. Normally, this might be considered a valid objection, if an evaluation had to be placed upon the credibility of only two witnesses, namely, the Claimant and the Superintendent, but in the case at bar there were other witnesses that corroborated the Carrier's assertions.

An objection was made by the Claimant concerning the exclusion of testimony pertaining to the Agreement and working conditions. We see no relevancy or materiality in this offer and the objection was properly sustained.

There is no showing that the Superintendent's instructions created an unsafe condition. The Claimant avoided his responsibility for an hour before seeking relief; this is clearly insubordination.

This Board has stated on many occasions that in situations of a similar manner, the Claimant should perform the work in question and complain later.

The Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.

LABOR MEMBER'S DISSENT TO AWARD 11238, DOCKET TD-12666

The action of the Carrier in this case was arbitrary, capricious, in abuse of managerial discretion and based on charges not supported by the evidence of record.

The confronting record makes it clear that:

(1) The Employees were arbitrarily denied a requested clarification of the charges preferred against the accused.

(2) The Employees were denied the right to interrogate a Carrier officer not immune from responding as a witness in respect to his knowledge of material facts and issues.

(3) The Employees were denied the right to introduce evidence in respect to a long-existing agreement with the Carrier material to establishing the conditions under which the individual claimant was required to perform his exacting duties.

(4) The officer who conducted the hearing, saw the witnesses, and heard the testimony, did not fulfill his clear responsibility to evaluate the evidence and render the decision.

(5) The Superintendent, who precipitated the dispute, who filed the charges, who was the complaining witness, also rendered the decision imposing economic capital punishment upon the accused, and thereby sat in judgment on the truthfulness and credibility of his own testimony.

Each and every one of the five unwarranted infringements upon Claimant Chadwick's right to be accorded due process is substantive and not technical. Each and all of them provide a compelling basis upon which to sustain his claim and this Member submits that this should have been done in forthright terms.

For these and other reasons Award 11238 is in error and I dissent.

R. H. Hack

Labor Member