



Award No. 15646
Docket No. TE-16501

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Louisville and Nashville Railroad (NC&StL Dist.), that:

1. Carrier acted improperly when it dismissed Extra Operator C. H. Mann from its service effective April 26, 1966.
2. Carrier shall, because of the violation set out above, reinstate Operator C. H. Mann to its service, with all rights unimpaired, and pay for all time lost.

OPINION OF BOARD: After examining and re-examining the record, and after considering the argumentation made by and in behalf of the parties, we do not think a lengthy treatise in this case would serve a useful purpose. Semantics present problems, but a careful review of the facts persuades us Claimant was not deprived of the benefit of due process of law. Moreover, we do not believe the Agreement of the parties was violated by Carrier.

However, we believe that the punishment assessed by Carrier should be modified. Several circumstances appearing of record support this viewpoint: (1) Claimant's insubordination was of a mild type, e.g., he was polite, and was apparently presenting his personal interpretation of the Agreement in good faith; (2) at the time of the happening which led to this grievance, there was some confusion existing as to the interpretation of Article 9 of the Agreement (honest minds differed); and (3) over a period of six or seven years previously, Claimant had never before declined (directly or conditionally) to protect extra work. Carrier is correct that none of these circumstances legalizes insubordination, which we cannot and do not condone. But, there are varying degrees of fault and perspective should not be abandoned in the settling and adjusting of such matters.

Here, we believe, we are confronted with one of the rare situations which justifies us in reducing the penalty imposed.

Therefore, Claimant's original dismissal by the Carrier is sustained, but in view of the many mitigating circumstances in this particular case, we believe that Claimant should be reinstated to the service of the Carrier, with seniority unimpaired, but without pay for time lost.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

I. That the Agreement was not violated.

II. That while Carrier was justified in taking disciplinary action, the penalty of outright dismissal was too severe.

III. That Claimant should be restored to the service of the Carrier, with his seniority rights unimpaired, but without payment for time lost.

AWARD

Claim adjusted and decided as above indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.

DISSENT TO AWARD 15646, DOCKET TE-16501

I believe the majority erred when it failed to modify the discipline in conformity with its observations. The Employees argued persuasively that even if an objective evaluation of all the circumstances here should lead to an opinion that Claimant was mistaken in the position he took, Carrier was not justified in assessing more than a 15-day suspension. This contention was clearly supported by our Award 13467, in which we found such a suspension to be proper in a case where the dereliction obviously was less excusable than the action taken by Claimant Mann.

I dissent.

J. W. Whitehouse
Labor Member