

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of General Committee of the Brotherhood of Railroad Signalmen of America on the Chesapeake and Ohio Railway that:

(a) Signal Maintainer E. E. Brown be reinstated to his position of Signal Maintainer at Columbus, Ohio, with seniority, vacation, and all other rights restored.

(b) Brown be paid for all wage loss sustained by him since his dismissal from the Carrier's service for alleged conduct unbecoming an employe and by coming to the Divisional Safety Meeting at Columbus, Ohio, Friday, August 5, 1955, in an intoxicated condition. [Carrier's File SG-97]

OPINION OF BOARD: The facts are not in dispute and need not be repeated here.

This is a discipline case where the Carrier dismissed the Claimant from service for "conduct unbecoming an employee."

No complaint has been made as to the procedures in the conduct of the investigation and the subsequent handling and we therefore hold that all procedural requirements under all rules were properly followed.

The Carrier's representative in the Board raised a procedural question which was not presented or discussed by the parties when this case was handled on the property and therefore this Board will give it no consideration.

While still on the property a discussion was had and the Organization suggested that the Carrier return the Claimant to service on a leniency basis.

The rule that this Board has no authority to order reinstatement on a leniency basis is well established. It is aptly stated in Award 6085.

"There is a vast difference between the correction of an excessive penalty and reinstatement on a leniency basis. We can correct an excessive penalty because the imposition of such a penalty is a violation of those provisions of the agreement which are adopted to protect employes from arbitrary, capricious or discriminatory discipline by the carrier. Reinstatement on a leniency basis is a discretionary remission of an appropriate penalty. We do not remit penalties on a leniency basis because we have no power or right to exercise managerial discretion."

The Awards of this Board have established the principle (that unless there has been a gross miscarriage of justice and the Carrier has acted in an arbitrary and capricious manner, the Board should not substitute its judgment for that of the one regularly charged with the responsibilities of maintaining order and enforcing reasonable regulation.) *Just*

From an analysis of the record and based on the past position of the Board in cases such as this one we find no reason for upsetting the action of the Carrier.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1959.