

Award No. 15364
Docket No. TE-15986

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chesapeake and Ohio Railway Company (Chesapeake District), that:

1. The Carrier violated and continues to violate the Agreement between the parties when on or about June 21, 1965, it improperly dismissed Mr. C. H. Watts from the service of the Carrier.

2. Carrier shall reinstate Mr. C. H. Watts to his former position with seniority, vacation and all other rights intact and reimburse him for all wages lost.

OPINION OF BOARD: We have carefully considered the parties' contentions during the handling of this claim on the property as well as argument presented in behalf of their respective positions before this Board.

We are of the opinion that the facts require that we follow that line of Awards of this Division that hold that we should not substitute our judgment for that of the Carrier in a matter of this kind.

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

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 17th day of February 1967.

DISSENT TO AWARD 15364, DOCKET TE-15986

In my opinion Award 15364 violates almost every principle established by this Division of the Adjustment Board for consideration and decision of discipline cases.

In the first place, the "Opinion of Board," in six typewritten lines, summarily brushes aside every point raised in behalf of the claimant without any indication, other than the mere statement, that they were in fact "carefully considered." I feel obliged to object strenuously to such treatment of a man who has devoted forty five years of his life to service of a single railroad. That service alone demanded a full explanation of why the majority felt he was properly deprived of his job.

Numerous awards of this Board have established that the burden of justifying disciplinary action rests with the Carrier. And in meeting this burden the Carrier must show that the accused employe has violated a rule reasonably related to the conduct of its business; that the discipline imposed was reasonable in view of the seriousness of the offense, and was administered without bias or discrimination, taking into account the employe's past record for this purpose only. These awards hold that only in rare and exceptional cases may the Board go beyond the record developed by the Carrier's investigation or hearing in judging the propriety of its action. These principles, and numerous others, are summarized in Award 8431.

In the case improperly decided by Award 15364 there was no charge of any rule violation. The employe was off duty and not under pay. In common with many millions of other members of the human race, he indulged in drinking of the cup that is said to cheer. He was to some extent, at least, under the influence of such a beverage when he came to the railroad station on the morning in question. One of his fellow workers, noting that perhaps he might get into trouble, called another employe — a member of the Carrier's security force — and asked him to take Mr. Watts' home.

Instead of complying with this request the employe thus called, Assistant Special Agent Woodyard, contacted Special Agent Dunford, and together they went to the station and into the attached restaurant where Mr. Watts had gone, arrested him and, after threatening to drag him to jail, took him to the city police station where they secured a warrant charging him with being intoxicated or drunk in public.

The city authorities dealt with him on the basis of the charge, assessing what amounted to a fine which Mr. Watts paid. Then, on the same charge, the Carrier held a hearing and discharged him from his job. The record of this hearing contains no evidence — nor even an intimation that violation of any rule was involved. There was no charge — nor evidence — that the Carrier's service or reputation was in any way adversely affected. In short, the Carrier did not establish justification for administering a second punishment for Mr. Watts' mild indiscretion. This Board has held that in a similar case a Carrier may not take such action against an employe who has previously paid the penalty prescribed by law for such a misdemeanor. Award 8195.

When the case came to the Board the Carrier argued that its action should not be overturned because of the claimant's alleged intractability for years, and acts subsequent to his discharge. This Board is firmly committed to the well known principle that such new issues, not handled and made a part of the dispute on the property, may not properly be considered. In spite of this principle, and in spite of the equally well established tenet that ordinarily our consideration is limited to the record made at the Carrier conducted hearing, the majority quite evidently gave these improperly injected arguments some value in reaching its conclusion that the Board should not reverse the Carrier's action.

Moreover, the belated charge of intractability will not stand in light of the claimant's employment record, which was made a part of the Board's file. If this employe in fact had been as troublesome as the Carrier sought to show, his employment record certainly would reflect it. That record shows that Watts started to work in 1920 and continued his employment until his dismissal in 1965. During his first fifteen years Watts on eight occasions made mistakes sufficient to be noted in his employment record. Most of these mistakes involved technical irregularities in his work. But none of them were serious enough to require discipline more drastic than a record suspension of thirty days, and that occurred in 1921, a little more than one year after he started work.

In 1941 he was promoted to train dispatcher, but later, in 1943, he was disqualified as a dispatcher on two districts. Apparently he had some difficulty with the more responsible position, but there is no indication of intractability.

Not once in his 45 years of service was any entry made to indicate that his personal habits or deportment were in any way objectionable. Even more important is the fact that for thirty years — from 1935 until 1965 — there is not a single entry on his record relative to his employment as a telegrapher.

In view of the record before us the Carrier was not justified in dismissing this life-long employe; and the majority which adopted Award 15364 had no basis for finding in favor of the Carrier.

Therefore, I must vigorously dissent.

J. W. Whitehouse
Labor Member