

265
Award No. 16614

Docket No. MS-17491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

JOSEPH CONIGLIARO

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: The questions to be resolved are:

1. Was Joseph Conigliaro guilty of any infraction of the working rules of the company, and
2. Was the action of the company in discharging Joseph Conigliaro extremely harsh in view of all the circumstances in the case.

OPINION OF BOARD: This is a discharge case in which the affiliate Brotherhood of Claimant does not appear as a party to the dispute on appeal. Under such circumstances we shall not summarily dispose of the matter on jurisdictional grounds though such would be proper. We deem it equally proper to review the record sufficiently to make the final documentation of Mr. Conigliaro's case sufficiently illuminative that all interested parties may know what actually happened.

The incident which resulted in Conigliaro's discharge took place on July 14, 1965. He was alleged to have left his assignment 30 minutes early, taking with him certain company property, i.e., shrubbery. By written notice of July 16 following he was summoned for a hearing on July 20. He thereupon notified Mr. S. P. Denny, his Division Chairman, of the impending hearing and made an appointment to meet Denny at the latter's office at 8:00 A. M., on the day of the hearing to prepare his defense, the hearing being scheduled at 10:00 A. M. on such date. He failed to make the first appointment, and was late for the hearing. Having been apprehended with the stolen property and away from his post of duty, he readily admitted his guilt, pleading only for leniency. He was discharged, yet once again he declined to avail himself of assistance from his Brotherhood. Instead, he advised Chairman Denny that he was going to get a lawyer and sue the Carrier. Thus we have the absence of the Brotherhood in this proceeding.

On August 16, 1965, Claimant was notified of his dismissal. On March 11, 1966, he undertook an appeal which was denied by Carrier's Superintendent on March 16, 1966. The matter then lies dormant for over a year at which time Claimant surfaces through a letter from his attorney to the Superintendent, who again denied the appeal. On April 18, 1967, counsel for Claimant appeals to Carrier's highest designated officer. On May 10, 1967 this

appeal is denied and such officer expresses a willingness to have a conference. No conference was held, Claimant opting once more to ignore statutory procedure. Through his counsel he lodges his appeal to this Board.

The claim has no substantive merit. Even had it been meritorious, we would have no jurisdiction to grant relief. The provision of the Railway Labor Act requiring a conference on the property (Section 2, Second) is not only mandatory, it is a very salutary ordinance. The claim is denied.

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 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 27th day of September 1968.

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