

SPECIAL BOARD OF ADJUSTMENT NO. 521

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

THE MONONGAHELA CONNECTING RAILROAD COMPANY

AWARD IN DOCKET NO. 4

STATEMENT OF CLAIM:

(1) The Carrier violated the effective Agreement, specifically Article 21, Hearings and Discipline, when it dismissed from the Carrier's service, Maintenance of Way Track Department employee, Joseph R. Del Gatti, on July 12, 1965.

(2) The Carrier shall now reinstate Maintenance of Way employee Joseph R. Del Gatti to the Carrier's service with his full seniority rights and all other rights (fringe benefits) which have accrued to him because of his service with the Carrier.

(3) He shall now be reimbursed in full, for all wages lost to him on this account, and that all working time during the period between July 12, 1965 and the date of his reinstatement shall be considered and recorded as compensated service rendered to this Carrier.

FINDINGS:

Claimant in this case was involved in an accident on Carrier's property in which another employee was injured. Upon request, Claimant signed a statement setting forth the circumstances of the accident.

The injured employee later brought suit against the Carrier in the Federal District Court for personal injury damages. In the ensuing trial, Claimant appeared as a witness and his testimony in court was in direct contradiction of the information he previously gave the Carrier in his signed statement.

We have no way of knowing which of Claimant's statements is correct. We do know the Carrier was thus subjected to possible economic risk and expense defending itself in Court.

Carrier discharged the Claimant, and the Organization is here seeking his reinstatement with pay for all time lost.

In the light of these facts, and the record of the hearing before this Board we will not substitute our judgment for that of the Carrier. Carrier is entitled to protect itself against such conduct on the part of an employee. Its action in discharging this employee was a proper exercise of its basic right to discipline. See First Division Award 16785, Second Division Award 4452 and Third Division Award 10001.

AWARD: Claim denied.

/s/ Edward A. Lynch
Edward A. Lynch, Chairman

/s/ A. J. Cunningham
A. J. Cunningham, Organization Member

/s/ J. L. Hadley
J. L. Hadley, Carrier Member

Dated and signed at Pittsburgh, Pennsylvania, this 30th day of September, 1965.