

Award No. 1850

Docket No. 1824

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that—

Yardmaster R. A. Brann be reinstated and receive all emoluments from the 9th day of February 1962 to the day he is so reinstated.

OPINION OF BOARD: This dispute concerns Claimant's dismissal from a yardmaster position on February 9, 1962.

It is a matter of some concern that Claimant was not accorded a formal hearing or investigation. The applicable rules, however, differ considerably from those ordinarily before us in that they contain no provision requiring hearings or investigations in discipline cases. Rule 6-A-1 is controlling and, by express language, covers the situation where an employe considers that " * * * an injustice has been done with respect to any matter arising under this Agreement, * * * "

It does not prescribe a hearing or investigation but instead sets up a procedure whereby the aggrieved employe presents the case in writing to his immediate superior and then has a right of appeal in the event the decision is unsatisfactory. The requirements and procedures of Rule 6-A-1 are all inclusive and consistent with the other provisions of the Agreement. Ordinarily a hearing, if requested, is an essential element in any case involving an employe's discharge but here the contracting parties themselves have provided for a different procedure. We are not at liberty to ignore or amend rules agreed to by the Organization as well as Carrier and find no basis for concluding that the Agreement was violated by the refusal to give Claimant a hearing or investigation. Claimant appears to have had full opportunity to present his grievance in accordance with the terms of the applicable Agreement.

There is evidence in the record that an engine and its crew were idle on the morning of February 9, 1962, for about fifty-five minutes and that, in investigating the situation, Assistant Freight Trainmaster Kettler,

in the company of two other officials, found Claimant dozing at a desk in the yard office. Carrier certainly possessed the right to observe and investigate Claimant's conduct while on duty and there is no persuasive evidence before this Board to support the charge that Claimant was singled out for discriminatory treatment by Kettler. Under these circumstances, we are not disposed to disturb Carrier's findings regarding the incident of February 9, 1962.

An examination of the record indicates that Carrier did not consider that that incident alone was a sufficient basis for dismissal. Instead, it relied on a record of eight infractions during the four year period from 1958 through 1961, in addition to the February 9, 1962, occurrence, as reasons for Claimant's discharge. Several of the eight infractions contained in that four year record are so patently insubstantial (one concerns a misspelling of an employe's name) or vague that they cannot validly constitute, either singly or as part of a pattern, a basis for such grave discipline as dismissal.

The record in a discharge case should be clear and complete and while this Board ordinarily will not substitute its judgment for that of Carrier in matters of discipline, it has no alternative but to do so when the record is defective or the Carrier's action is unwarranted.

In view of the weaknesses in the record of infractions on which Carrier has relied, we find that dismissal is excessive and unwarranted in this case. Accordingly, we will direct Claimant's immediate reinstatement to his yardmaster position with all rights unimpaired but without back pay. A lengthy suspension from service would seem to be adequate discipline in the light of the record before us.

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

The carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 24th day of September, 1963.