

Referee Harold M. Weston

PARTIES Mr. David P. Neamond (Petitioner)
TO
DISPUTE: Norfolk and Western Railway Company

STATEMENT OF CLAIM: To have petitioner, David P. Neamond, reinstated with the carrier, Norfolk and Western Railway Company, with his seniority rights and all other rights unimpaired and compensated for all wage losses resulting from his wrongful dismissal from the service of the said carrier.

OPINION OF BOARD: Claimant was dismissed from Carrier's service on September 22, 1964, for improper operation of the Pier 5 Barney on September 6, 1964.

A hearing was held on due notice before the discipline was meted out and Claimant was afforded fair opportunity to be present there and to present his case. His appeal from Carrier's decision was thereafter processed through the grievance machinery but, in violation of Rule 22, was not progressed to the National Railroad Adjustment Board until some 31 months after the claim had been denied by the highest designated grievance officer.

Quite apart from this and other serious procedural defects on Petitioner's part that are disclosed by the record and were not waived by Carrier, we are satisfied from a careful examination of the evidence that Carrier's findings of fact are supported by proof. Assistant Foreman Goode's testimony is clear and specific in that regard and is to the effect that Claimant's negligence was the proximate cause of the mishap in question. There is no basis in the record for doubting Goode's credibility on impugning his motives as a witness, and in line with a long line of consistent awards by the Adjustment Boards, we will not set aside Carrier's finding as to Claimant's improper handling of the Pier 5 Barney since it is supported by substantial credible, even if controverted, evidence.

Dismissal is extreme discipline but we perceive no persuasive ground for substituting our judgment for that of Carrier in this matter or for holding that it is arbitrary or capricious under all the circumstances.

FINDINGS:

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

The carrier and the employe 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 waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

E. A. Killeen

E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1972.