

Award No. 5984

Docket No. 5729

2-A&S-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

THE ALTON & SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carmen E. Schmidt and M. Thurston were improperly suspended from service for 60 days, July 5 through September 2, 1967.

2. That accordingly, the Carrier be ordered to compensate Carman Schmidt for 352 hours, and Carman Thurston for 344 hours, the amount of regular time lost by each while suspended.

EMPLOYEES' STATEMENT OF FACTS: E. Schmidt and M. Thurston, hereinafter referred to as the claimants, are employed by the Alton and Southern Railroad, hereinafter referred to as the carrier, as Carmen at East St. Louis, Illinois. Their assignments at the time here relevant were as Car Inspector and Shift Foreman respectively, in Davis Train Yard, hours 11:59 P. M. to 7:59 A. M.

On date of June 15, 1967, each claimant was mailed a registered letter to the effect he was charged with removing material from car in interstate shipment on the morning of June 14, 1967, and that an investigation would be held at the designated place at 2:00 P. M., June 22, 1967. Each was requested to be present with representative and any witnesses desired.

The investigation was held as scheduled.

Subsequent to the investigation each claimant received a letter from the carrier dated July 3, 1967, notifying that he was found guilty as charged and would be suspended from service for a period of 60 days, beginning July 5, and ending September 2, 1967.

Timely claims were filed in behalf of the claimants and the dispute has been handled with Carrier officials up to and including the highest officer so designated by the company, with the result he has declined to adjust it.

"We find that the claimant did, without permission, expressed or implied, take gasoline presumably for his own use from the carrier's pump on September 26, 1955, October 8, 1955 and October 10, 1955. We also find that the claimant was afforded a fair investigation on the property and that credible evidence presented at the hearing fully supports the charges against him. We also find he was dismissed for just cause."

Following the principles set forth in the above awards as well as many other similar awards by your Board, the record in this docket shows that claimants were properly notified of the charge against them, that they were both given a fair and impartial investigation and that the discipline assessed was not arbitrary or unreasonable. Under these circumstances, your Board "is without power the substitute its judgment for that of the carrier," as stated in Award 4401. It follows that the claim in this docket should be denied.

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

The carrier or carriers and the employe or 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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants, Carmen E. Schmidt and M. Thurston, at the times involved in this dispute, were employed as Car Inspectors in Carrier's Davis Street Yard at East St. Louis, Illinois. Both were assigned to work from 11:59 P. M. to 7:59 A. M.

The following charge, dated June 15, 1967, with emphasis supplied, was served on each Claimant:

"You are hereby charged with the removal of material from freight car Penna 366707, a loaded car, standing on track No. 003, in Davis Yard, on the morning of June 14, 1967, while you were working as a Car Repairman Inspector, in Davis Yard on the shift which began at 11:59 P. M., June 13, 1967. This car was a load moving in interstate shipment from the State of New York to the State of Arizona.

An investigation of this charge will be held in the conference room on the first floor of the Alton and Southern Main Office, 1000 South 22nd Street, East St. Louis, Illinois, at 2:00 P. M., Thursday, June 22, 1967. Please arrange to be present.

You may have a representative of your choice at this investigation and bring any witnesses you desire."

Hearing was held at the time and date appointed in the charge, a transcript of which is in the record. Carrier's findings and assessment of discipline,

dated July 3, 1967, served on each Claimant and identical in content, read, with emphasis supplied:

"At an investigation held in the general offices of this company at 2:00 P. M., Thursday, June 22, 1967, it developed that you were **guilty of removing material from freight car PENN 366707** on the morning of June 14, 1967, in violation of the rules of this company.

For this offense, you are hereby suspended from our services for a period of 60 days. This suspension will take effect on July 5, 1967, and will expire on September 3, 1967."

On August 19, 1967, the Local Chairman filed appeal with the General Car Foreman asking that Claimants be paid for the period they were suspended. This appeal and a subsequent appeal to the Superintendent of Equipment and the Director of Personnel were each denied.

In discipline cases our function is that of an appellate forum. We review the record made on the property to determine whether: (1) the employee(s) involved were afforded due process; (2) Carrier's findings as to guilt are supported by a preponderance of material and relevant evidence of probative value; and (3) discipline assessed was reasonable.

From our review of the record in this case we find: (1) Claimants were afforded due process; (2) Carrier's findings of guilt as charged are supported by a preponderance of material and relevant evidence of probative value; and (3) the discipline assessed was reasonable. We, therefore, are compelled to deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1970.