

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Baltimore and Ohio Chicago Terminal Railroad Company

Dispute: Claim of Employes:

1. That as a result of an investigation held on Monday, September 12, 1977 Carman Levy Jones was dismissed from the service of the Baltimore and Ohio Chicago Terminal Railroad effective September 29, 1977. Said dismissal of Carman Jones is in violation of Rule 26 of the current working agreement as well as being arbitrary, capricious, unjust, unfair and unreasonable.
2. That the Baltimore & Ohio Chicago Terminal Railroad, hereinafter referred to as the Carrier, be ordered to reinstate Carman Levy Jones, hereinafter referred to as Claimant to the service of the Carrier with seniority, vacation and all other rights unimpaired, in addition to compensation at the pro rata rate for eight hours for each day Claimant is withheld from service from September 6, 1977 until such reinstatement takes effect.

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.

Claimant, Levy Jones, a Carman at Carrier's Barr Yard Car Shop at the railway terminal facility located in Chicago, Illinois, was dismissed from service effective September 29, 1977, following an investigation held on September 12, 1977, in which Claimant was adjudged guilty as charged of unauthorized possession and attempted theft of Company property.

On the evening of September 6, 1977, at approximately 8:15 p.m., three employees, one of whom allegedly was the Claimant, were observed by a Property Protection Department Patrolman taking brass journal bearings from the Car Shop at Barr Yard and loading the brass into the trunk of an automobile. The Patrolman immediately reported his observations to his Supervisor and together the Patrolman and Supervisor arrived on the scene at approximately 10:45 p.m. and attempted to

identify the owner of the vehicle into which the brass had been placed. During their investigation they learned the automobile belonged to Carman Bobby Roy who had secured permission to bring the car into the Shop area in order to change the oil during his lunch period. When approached by the security officers, Carman Roy admitted that he was in fact, in possession of Company property. Carman Roy accompanied the security officers to his automobile whereupon he opened the trunk which contained nine (9) 6" x 11" steeple backs and two (2) flat back scrap journal bearings. Under further questioning, Carman Roy revealed to the security officers that Claimant Levy Jones was one of the other two employees who had been involved in the attempted theft. Roy further related to other company officials the next day that the motive for taking the Company property was an awareness by all three employees involved that it was easy to sell scrap brass "on the street" and that they had determined together that they would secure some brass and sell it. When apprised that there would be a formal investigation conducted regarding the incident, Carman Roy elected to resign from service of the Carrier. On the same date as Carman Roy's resignation, September 7, 1977, Carrier sent notification to Claimant that he was to attend an investigation on September 12, 1977.

The Organization takes exception to Carrier's action of suspending Claimant from service prior to the date formal investigation was held asserting that such action is violative of Rule 26 of the Controlling Agreement, effective September 1, 1926. Rule 26 reads in pertinent part as follows:

"(c) No employee shall be disciplined without a fair hearing by the Carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and the duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The Organization further maintains that Claimant was not afforded a just and impartial hearing on several grounds, citing as most important the multiplicity of roles assumed by the hearing officer. Specifically, the Organization notes the hearing officer in addition to holding the hearing also conducted the preliminary investigation, preferred the charges, reviewed the record, assessed the discipline and denied the appeal. This multiplicity of roles, the Organization asserts, led to a biased review of the record, a prejudicial determination of guilt, and an unwarranted assessment of discipline. Finally, the Organization insists that the evidence in the record simply does not support the finding that Claimant was guilty.

Upon a thorough review of the record, we determine that the objection raised by the Organization regarding the multiplicity of roles assumed by the hearing officer did not, in any way, impair Claimant's right to due process and therefore we conclude Claimant did, in fact, receive a fair and impartial hearing. As to Rule 26, we cannot conclude that Carrier violated said rule but rather, under the circumstances, we believe Carrier acted properly in suspending the Claimant prior

to holding the investigation. Finally, the Board determines that there exists substantial proof in the record supporting the finding of Claimant's guilt and that the imposition of dismissal was neither arbitrary, capricious, discriminatory or excessive but instead was an altogether appropriate and proper discipline given the offense involved.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of February, 1980.