

Award No. 463

Docket No. 502

2-C&S-CM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 140, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: W. L. Carey was discharged for alleged theft of coal without proper investigation. Intimidation, discrimination, coercion. He requests oral hearing or reinstatement with pay for all time lost in accordance with the Shopmen's Agreement.

JOINT STATEMENT OF FACTS: Under date of October 25, 1938, W. L. Carey submitted to the Second Division, National Railroad Adjustment Board, an ex parte submission covering question involved in this claim. This case is still pending before your Board. Under date of March 13, 1940, W. L. Carey requested System Federation No. 140, Railway Employees' Department, A. F. of L. (Brotherhood of Railway Carmen) to take over the handling of his claim. The general chairman representing the Brotherhood of Railway Carmen has further discussed his case with the carrier and they are agreeable to joining System Federation No. 140 in the disposition of Mr. Carey's ex parte submission to your Board. Therefore, this joint submission covers the case which is now before your Board as submitted ex parte by W. L. Carey.

W. L. Carey was notified by division superintendent on March 28, 1938—"Please arrange to be at my office at 7:00 P. M. date with representative if desired for investigation relative to alleged theft of coal from C. B. & Q. car 16134." Mr. Carey complied with the request, attended the investigation and was represented by a Mr. Frank Hall, attorney-at-law, of Trinidad, Colorado.

Following the investigation, W. L. Carey was held out of service pending determination of the investigation and was so notified. Under date of April 15, 1938, W. L. Carey was again notified—"Please arrange to report at earliest opportunity to the office of division superintendent for supplementary investigation relative to the alleged theft of coal from C. B. & Q. 16134 in Trinidad Yards. Please advise as soon as possible when you will be ready for this supplementary investigation in order that date may be arranged for same." Arrangements were made to hold the supplementary investigation the afternoon of April 19, 1938. W. L. Carey attended the investigation. The representative whom he desired to represent him was on a vacation. W. L. Carey was agreeable to proceeding with the investigation provided he could represent himself.

On May 5, 1938, the general foreman at Trinidad wrote W. L. Carey—"This is to advise that you are dismissed from the service of this company for theft of coal from C. B. & Q. car 16134 in Trinidad yard."

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.

The parties to said dispute waived right of appearance at hearing thereon.

W. L. Carey failed to protect his rights under the agreement in effect, specifically that part of Rule 29 reading:

“* * * In case he is not satisfied with the result of said investigation, he may within ten (10) days after receiving decision, appeal same to the Superintendent Motive Power who will arrange for a hearing within ten (10) days after receipt of such appeal. * * *”

His failure to comply with this provision prevents the Division from passing upon the propriety of the investigations that were held or the merits of his claim. ✓

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of June, 1940.