

Award No. 1776

Docket No. 1631

2-T&P-CM-'54

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Coach Cleaner Manuel Jackson was unjustly dismissed from the service on November 13, 1952 and that, accordingly, he is entitled to be reinstated to his former seniority rights with compensation for all time lost retroactive to the aforesaid date.

EMPLOYES STATEMENT OF FACTS: Coach Cleaner Manuel Jackson, hereinafter referred to as the claimant, was employed as such by the carrier on April 3, 1943 in the coach yard at Fort Worth, Texas, with a continuous seniority dating therefrom and his regular assignment of hours was from 11:30 P.M. to 7:30 A.M. Saturdays through Wednesdays, with rest days Thursday and Friday.

The claimant was summoned by letter to report for an investigation at 2:00 P.M. Thursday, November 6, 1952, on the charge of conversion and possession of company property, as set forth in the submitted copy of letter dated November 4, 1952, addressed to the claimant by the carrier's Mr. E. E. Long, master mechanic, identified as Exhibit A. That investigation was held as scheduled and a copy of the transcript thereof is submitted herewith and identified as Exhibit B.

On November 13, 1952, the aforesaid officer of the carrier made the election to notify the claimant in writing that he was dismissed from the service and this is affirmed by the copy of letter submitted herewith and identified as Exhibit C.

This dispute has been handled with the proper carrier officers, from the bottom to the top, with the result that the highest designated official thereof has declined to settle it, which is affirmed by the submitted copy of letter dated February 19, 1953, addressed to Mr. Y. L. Crumpton, general chairman of the carmen, by G. B. French, director of personnel, identified as Exhibit D.

The agreement effective September 1, 1949, is controlling.

nent proponent of the pending legislation, at a hearing before the Senate Committee on Interstate Commerce said:

"Take the question of discipline, for example. It seems to me that such a national board, if it were wise, ought to make it perfectly clear at the outset that it has an exceedingly good case, and all doubtful cases after it has made that policy clear would not be referred, I assume, to the National Board."

In **Texas and New Orleans Railroad Company vs. Brotherhood of Railway Clerks**, 281 U.S. 548, The Supreme Court said:

"The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the Carrier to select its employees or to discharge them."

Awards 10687-8, **Brotherhood of Locomotive Engineers vs. Southern Pacific Company (Pacific Lines)**. Referee Curtis W. Roll assisted the Board in denying the cases wherein it is stated:

"In Award No. 891, Referee L. K. Garrison sitting as a member of this Division, it was said:

'Our function in this case is not to substitute our judgment for that of the Carrier, or to determine what we might or might not have done had the matter been ours to handle. We are entitled to set aside the Carrier's action only upon a finding that it was so clearly wrong as to constitute an abuse of discretion vested in the Carrier.'

This rule has been restated in different language but has been consistently adhered to.

We have carefully read the entire transcript of the evidence. The evidence is not entirely satisfactory and not as conclusive as it might have been. Yet we are not able to say that the action taken by the Carrier was so clearly wrong as to amount to bad faith."

Similar awards along these lines are First Division Awards 891, 1059, 2769, 2770, 11442 and 11728. Second Division Award 1041 and Third Division Awards 833 and 4146.

CONCLUSION: The discipline given Mr. Jackson was assessed in good faith by this carrier. The whole record would indicate that there has been no abuse of discretion.

Carrier submits that the claim asserted on behalf of Manuel Jackson is without merit and requests that the Board deny the claim in its entirety.

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 employees 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.

Carmen of System Federation No. 121 make the claim that Coach Cleaner Manuel Jackson was unjustly dismissed from carrier's service on November 13, 1952. They ask that he be reinstated to his former seniority

rights and compensated for all time lost as provided by Rule 22(d) of the parties' agreement when it is found an employe has been unjustly dismissed from the service.

Claimant was employed by carrier on March 28, 1943 in its coach yard at Fort Worth, Texas. He was, at the time herein involved, regularly assigned 11:30 P. M. to 7:30 A. M., Saturday through Wednesday. On November 4, 1952 carrier charged claimant with "conversion and possession of company property." Hearing was had on November 6, 1952. On November 13, 1952 Master Mechanic E. E. Long notified claimant of his dismissal based on the evidence adduced at the hearing.

The company property which claimant was charged with having in his possession consisted of six dressed chickens that had been removed from Diner 1011 and 3-½ lbs. of butter, that had been removed from Diner 1010.

It should be noted claimant was not charged with having taken this food from the Diners.

The evidence shows that on Monday, November 3, 1952, shortly after 7:30 A. M., claimant was apprehended by Passenger Car Foreman R. M. Sharp as he was about to leave the company property with a carton box in his possession containing two dressed hens, three and one-half spring chickens and three and one-half lbs. of butter; that this food belonged to the Dining Car Department of the company; and that it was food that had been removed from Diners 1010 and 1011 without authority.

Claimant gave no reasonable explanation of his possession thereof nor did he give my justification for having this stolen property in his possession. In fact, he at first attempted to avoid detection of what he had in the box by falsifying as to its contents. We think the evidence fully supports a finding that claimant was guilty of the charges made against him.

Suggestion is made that dismissal is too severe a penalty and unreasonable under all the circumstances. The charges are of a serious nature and fully established. Carrier should not be required to be burdened with an employe who has such tendencies.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May, 1954.