Award No. 1850
Docket No. MC-1489-93
2-PRR-1-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

MILDRED HARRISON—Petitioner

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYE: Claim of Mildred Harrison (hereinafter referred to as claimant-employe) for reinstatement in service together with compensation for wages lost, after having been discharged from her job as coach cleaner effective June 12, 1952.

EMPLOYE'S STATEMENT OF FACTS: Since the carrier has declined to consider a joint statement of facts, the following is submitted by the claimant-employe as a statement of facts as claimant-employe believes them to be:

On May 28, 1952, the claimant-employe, then employed as a coach cleaner, on the Chicago Division, was placed on trial on the following charge:

> "Found picking up two bundles from concealment in Coach 4019, Track No. 8, Coach Yard at 2:55 P. M. on May 25, 1952, containing 9 packages PRR Coffee, 4 boxes Sugar and 2 Drinking Glasses."

After the trial, claimant-employe was found guilty and pursuant to G-32 Notice No. 3209, dated June 10, 1952, was dismissed from the service of the carrier, effective June 12, 1952.

She appealed to the superintendent of the carrier and was granted a hearing on June 28, 1952. The superintendent denied the appeal in letter addressed to claimant-employe under date of July 3, 1952.

She appealed to the general manager, Western Region, Pennsylvania Railroad, the chief operating officer of the carrier designated to handle disputes with employes of the craft or class to which claimant-employe belonged. The general manager denied the appeal in a letter addressed to counsel for claimant-employe under date of January 6, 1953.

Counsel for claimant-employe has been advised that the carrier will reproduce the record of the trial held on May 28, 1952 and that the same will be submitted as an exhibit to the carrier's submission in this case. Accordingly, the said record is not reproduced as part of this submission of claimant-employe. Claimant-employe however specifically sets forth the following matters as facts some of which appear in the said trial record:

of company property involved in the claimant's offense were of relatively minor value, nevertheless the seriousness of such offense is not lessened thereby. The carrier has every right to expect competent, honest and diligent service on the part of its employes. When one of its employes evidences a lack of trustworthiness, as in the case here where it has been conclusively shown that the claimant concealed company property with the intent of misappropriating same for her personal use, the carrier submits that it is entirely justified, in the interest of its own protection as well as others, in imposing discipline by dismissal.

Your Honorable Board has recognized the principle that it may not substitute its judgment for that of the carrier in discipline cases where the carrier has not acted arbitrarily, maliciously, or in bad faith.

In this connection, the Board's attention is invited to the following quotation from Award No. 5026 of the Third Division (Referee J. S. Parker):

> ". . . It must be conceded it is the prerogative of management to maintain discipline among its employes and take such steps with respect to matters of that character as will insure honest, loyal and efficient service. The established rule, as we have often said, is that where the Carrier's action with respect to such matters is sustainable by the record we have no right to disturb it. Without condoning for a single moment claimant's inexcusable conduct while serving the Carrier in a position of trust and responsibility we confess that in view of his long record of service we have searched the record with a sympathetic eye in the hope it might disclose some mitigating circumstance justifying a conclusion the Carrier might have acted hastily and abused its discretion. As careful as our review of the record has been we have failed to find any circumstance, except claimant's long service, which might tend to mitigate the gravity of his offense. Long service in and of itself does not permit us to substitute our judgment for that of the Carrier. There the claim must be denied."

Note also the following appearing in Award No. 1323 of the Second Division (Referee J. Glenn Donaldson):

> ". . . it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

There is clearly no power vested in your Honorable Board to extend leniency in the case of proven and admitted guilt of a serious offense.

The carrier contends that there is ample evidence of record to support the charge against the claimant; that there is no evidence that its action in disciplining the claimant in this case was in any way arbitrary, capricious or in bad faith; and contends that, on the other hand the discipline was only imposed upon the claimant after full and proper trial, and on the basis of undisputed evidence of the claimant's guilt of the offense with which charged.

Therefore, your Honorable Board is respectfully requested to deny the claim in this matter.

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 were given due notice of hearing thereon.

On May 26, 1952 carrier notified Mrs. Mildred Harrison, then employed as coach cleaner at 12th Street Coach Yard in Chicago and with seniority date of June 27, 1946 in such class, to attend trial on the property in connection with the following charge:

> "Found picking up two bundles from concealment in coach 4019, track 8 Coach Yard at 2:55 P. M. on 5-25-52, containing 9 packages PRR coffee, 4 boxes sugar, 2 drinking glasses."

Said trial was held on May 28, 1952 and on June 10, 1952 carrier issued notice of Claimant Harrison's dismissal from the service, the "Outline of Offense" reading the same as the quoted charge.

The facts are as follows: While on duty in the coach yard on May 25, 1952, Mrs. Harrison and another employe (who was also subsequently discharged) accidentally discovered on a linen truck a bag which held, in addition to linen, approximately 40 packages of coffee, some water tumblers and several 2 lb. boxes of sugar. Carrier's name was stamped on the coffee packages. Mrs. Harrison took from said bag a pillow case (on which carrier's initials were stenciled), placed therein five packages of coffee and two boxes of sugar, and carried same to a coach which she was cleaning. Near the end of her tour of duty she took said bundle to coach No. 4019 and there placed it in the luggage compartment behind some pillows. She then left to change her clothes. Upon returning to this coach, and while in the process of removing the pillow case containing the above listed items, Mrs. Harrison was apprehended by a Sergeant of carrier's Police Department who had previously observed her carry the bundle to coach No. 4019. Claimant admits the essential facts in this case, and also admits she intended to carry home the above-listed items.

Claimant contends she was charged only with "picking up two bundles from concealment" (the two bundles referring to the pillow case and the bundle of her fellow employe who was similarly charged), that removing from concealment is not a prescribed offense, and that the disciplinary action was therefore improper. It is argued she was discharged for theft without being charged with theft. It is further asserted that even if she had been charged with theft and such charge were proven, dismissal would still have been improper, or at least too severe. Claimant contends actions of this kind represent a common practice among carrier's employes, and that her otherwise good record should also be considered.

Carrier responds claimant knew she was being charged with pilfering, that she failed to plead at the trial she was not correctly advised of the offense for which she was being tried, and that pilfering of carrier's property —while perhaps more common than it should be—cannot be condoned under any circumstances.

We find claimant had good reason to know she was being charged with improper possession of carrier's property, and with intended conversion to her own use. She knew the items were carrier's property. She had no right to their possession, nor any right to convert them to her own use. It strains our credulity to accept her contention she felt she was doing nothing wrong. Nor can we accept the doctrine, which claimant appears to advance, that the penalty should be reduced because the items were not of substantial value. Carrier is entitled to expect its employes will remain honest in all matters of this kind, not solely where substantial value is involved.

In conclusion, we are of the opinion and find that carrier was neither arbitrary, discriminatory or capricious in dismissing claimant from its service, and that the claim must therefore be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1954.