

Award No. 1913
Docket No. 1775
2-SP(PL)-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'

DEPARTMENT, A. F. of L. (Carmen)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Carman Emeil William Johannes was unjustly dismissed from the service April 19, 1954, and that accordingly the Carrier be ordered to reinstate him to all service rights.

EMPLOYES' STATEMENT OF FACTS: The Southern Pacific Company (Pacific Lines), hereinafter referred to as the carrier, employed Emeil William Johannes, hereinafter called the claimant, from 3:30 P. M. to 11:50 P. M., as a carman at the Los Angeles general shops, Los Angeles, California, and has been in the service therewith for approximately thirty-seven years.

The carrier's superintendent of the Los Angeles general shops summoned the claimant to appear for a formal hearing at 2:00 P. M., April 6, 1954, on the alleged charges of having removed carrier's property on March 25, 1954, a copy of the summons is submitted herewith and identified as Exhibit A. The hearing was held as scheduled and a copy of the transcript of such hearing is submitted herewith and identified as Exhibit B.

The carrier made the election, through its superintendent of the Los Angeles general shops on April 19, 1954, to dismiss the claimant from the service of the carrier, and this is affirmed by copy of letter submitted herewith and identified as Exhibit C.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective September 16, 1942, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that claimant was subject to the protection and to the benefit of the provisions of the aforesaid control-

current agreement and the Railway Labor Act, the carrier respectfully submits that it should be dismissed.

If, however, the Board elects not to dismiss same, the carrier then respectfully requests that the claim be denied on the showing it has made that the claim in its entirety is without merit.

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.

Claimant admitted that carrier's investigators found in the basement of his home a pair of cutting pliers, a scraper and three bits of different size, all belonging to carrier.

Claimant's statement that he had been using the pliers and scraper in his work and had forgotten to take them out of his pocket when he went home, was countered by that of the investigators that these tools were found in a tool box. His statement that the bits had been left there without his knowledge by H. A. Gottfried, who had been "driving holes" in his basement, was inherently improbable. From such record we cannot say that there was not sufficient evidence to support carrier's finding of dishonesty.

The fact that previously claimant had been stopped when leaving the shop grounds and there was found in his car a quantity of bulky company material, which he asserted was not in his possession but that of the same Gottfried, who was with him in his car, evidenced his continued association with one who had to his knowledge taken company property and placed him in a position which had been both embarrassing and incriminating.

We cannot say that carrier acted arbitrarily or capriciously in dismissing claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.