

Award No. 3132

Docket No. 2911

2-CRR-MA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 44, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

CLINCHFIELD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Machinist Ted Harrison was unjustly dismissed from the service of the Carrier on May 20th, 1957 at Erwin, Tennessee.

2. That accordingly the Carrier be ordered to restore this employe to service with all rights unimpaired and with compensation for all time lost, including vacation time and insurance benefits, since May 20th, 1957.

EMPLOYEES' STATEMENT OF FACTS: Machinist Ted Harrison, hereinafter, referred to as the claimant, was employed as an apprentice in 1928 by the carrier at Erwin, Tennessee. The claimant served four years as an apprentice-machinist. At the completion of his apprenticeship he was employed as a machinist, and has worked in this capacity for approximately 25 years, a total of 29 years service with the Clinchfield Railroad.

The carrier made the election to summons the claimant to the office of D. G. McBride, superintendent of shops, at 9:00 A. M., Friday, May 3, 1957, Exhibit 1, 2 and 3, for investigation concerning charges against him involving his participation in the removal from the files of the carrier and disposition of a document dated April 22, 1954, bearing the signatures of Mr. P. O. Likens and Mr. B. H. Emmert, relative to the transportation in the carrier's vehicles of employes leaving the carrier's property after completing their tour of duty.

He was charged with the above offense and any other irregularities or rule violation in connection therewith which may be developed in the investigation. Trial held May 10, 1957. Exhibit 4.

On May 20, 1957, the carrier made the election to dismiss the claimant from the service of the carrier, effective at the close of business this date

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 were given due notice of hearing thereon.

The grievant Harrison was given an old bulletin which had been posted by the Company to inform its employes, including Harrison, of its contents. The information it contained was intended for him and for his guidance. The actual bulletin itself was taken by a fellow employe from its place on the arch-file bulletin board. Harrison, after receiving the bulletin, gave it to his attorney and now is charged with violating Rule 816 of the general rules. The rule reads, "No one may dispose of Company property or contract any bill or obligation for its account, except by proper authority".

Here we do not need to inquire as to the exact meaning of the rule because it has not been shown that the claimant took the bulletin or that he urged someone else to take it.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1959.

DISSENT OF CARRIER MEMBERS TO AWARD 3132

In the award handed down by the majority, it is stated that carrier did not show that claimant took the document he was charged with taking or that he had urged someone else to take it. Apparently, the majority concedes that if claimant had himself taken the document or if he had in fact known that someone else took it without the carrier's consent, then he would have been properly discharged, and the majority's conclusion is based upon the finding that claimant did not in fact either take the document or know that it had been stolen. The majority is completely in error in finding that claimant had no knowledge of the origin of the document.

The evidence shows without dispute that an employe named Foster removed the document from the carrier's files. The document was still current, and the rules which it contained were still in full effect. Moreover, the document was not addressed to the claimant, as stated in the majority award, but was addressed to Storehouse employes. Claimant was a machinist. It is admitted by all parties, including the claimant, that Foster took this document and delivered it to the claimant.

It is apparent from the investigation that the only party involved in this proceeding who had any need whatever for the document was the claimant.

He had a personal injury suit pending in which the document was to be used as evidence. Foster, the man who stole the document, had no suit pending in and no controversy with the Company. The investigation further shows that the claimant asked Foster several times about the document before he finally received it. The carrier produced testimony (which it was entitled to believe) showing that Foster had previously stated that claimant asked him to get the document out of the files and that claimant knew where the document had come from when it was delivered to him. Taking all these facts together the carrier had a perfect right to believe that claimant not only knew where the document came from, but asked Foster to get it, and received it with full knowledge of the fact that it had been removed from the carrier's files without the carrier's knowledge or consent.

It is apparent from a reading of the majority award that the majority has considered only the evidence introduced by the claimant, completely ignoring conflicting evidence introduced by the carrier. The carrier is entitled to consider all the evidence, including that introduced by its own representative, and to make up its mind based upon the preponderance of all the evidence. This, the majority award has not permitted it to do, and for this reason the majority is in error.

The claim should have been denied.

E. H. Fitcher

D. H. Hicks

R. P. Johnson

M. E. Somerlott

(Vacancy)