Award No. 4747
Docket No. 4662
2-NYC-FO-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)

THE NEW YORK CENTRAL RAILROAD, WESTERN DISTRICT

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier unjustly dealt with and improperly discharged Laborer Percy Stevenson from its service on July 8, 1963.

2. That accordingly, the Carrier be ordered to reinstate Laborer Percy Stevenson to the service with all seniority, vacation, health and welfare and life insurance rights unimpaired and compensate him for all time lost account the aforesaid violation.

EMPLOYE'S STATEMENT OF FACTS: Laborer Percy Stevenson, hereinafter referred to as the claimant, was regularly employed by the New York Central Railroad Co., hereinafter referred to as the carrier in its Collinwood Diesel Terminal, Collinwood, Ohio, as a laborer, Sunday through Thursday 11:00 PM to 7:00 AM with Friday and Saturday as rest days.

Under date of June 19, 1963, carrier's Supt. R. L. Kohl addressed the following letter to Claimant:

"NEW YORK CENTRAL SYSTEM
Collinwood, Ohio, June 19, 1963
File 10.4

Mr. Percy Stevenson
5603 Outhwaite Avenue
Cleveland 4, Ohio

On the morning of Saturday, June 15, 1963, approximately 700 pounds of signal wire were found in the trunk of your car, located in the Collinwood Diesel Terminal area.

from service. The sole purpose of this rule was to provide for compensating the employee for any net wage loss suffered by virtue of an improper discharge or suspension. The intent of this rule was not to permit the employee to receive double compensation, which would be the case if no deduction or offset were made for the amount that the employee actually earned during his period of discharge or suspension from the carrier's service.

There has never been any dispute on this property where settlements are made in accordance with the provisions of Rule 24(f) referred to in the foregoing.

In addition, awards of the Adjustment Board have recognized the justification for such deduction from outside earnings.

CONCLUSION:

The transcript of testimony contains evidence which supports carrier's action in dismissing claimant for improper possession of 74 pieces of hard cord bronze wire that belonged to the carrier. Both claimant and his representative acknowledged that the hearing was fair and impartial. There is no evidence that carrier was arbitrary, capricious or acted in bad faith.

The claim is without merit or agreement support and should be denied 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 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.

Although he lived nine miles away, Claimant did not go near his car at the end of the shift in which the stolen wire was placed in the car trunk, or even at the end of the next shift, because he knew the railroad police were watching it.

The issues as shown in the Joint Statement of Facts on appeal from the local superintendent to the next officer of the Carrier, as required by Rule 24(b), were that there was no evidence that Claimant himself had put the wire in his car, and that he did not try to remove it from Company property.

But under the circumstances, the hearing officer cannot be held unwarranted in concluding that Claimant had possession of the wire in his car, that he knew it was there, and that he did not attempt to move his car because he did not want to be caught taking the wire from the property.

The issue raised on appeal to this Board is that the Claimant had not a fair trial, because he was not given a **hearing** on the precise charge as required by Rule 24(f), but was merely notified of an **investigation** to determine responsibility for the wire being found in his car. As stated in the Employee's Rebuttal the issue is "that Claimant was called to an **investigation** and not cited for formal **hearing.**"

The attempted distinction between an investigation and a hearing was not made in the Joint Statement of Facts on appeal from the local superintendent, upon which all subsequent appeals on the property were based; nor was it made on the initial appeal from the assistant superintendent to the local superintendent, in which the local chairman wrote:

> "I received the minutes of the **hearing** you held on Laborer Percy Stevenson, on July 8, 1963." (Emphasis added)

It is well established that in this connection, "investigation" and "hearing" are synonymous. Award No. 4348; Third Division Award No. 6590. In fact Rule 24 uses both terms as synonymous. Rule 24(f) requires a **hearing;** and Rule 24 (a), which provides, obviously for use on the first appeal from the discipline action after the hearing, that a copy of the transcript shall be furnished to the Committee "if stenographic report of the **investigation** is taken." Obviously, the hearing and the investigation are one and the same.

Since thus both Rule 24 and the local chairman in his initial appeal used the words "investigation" and "hearing" synonymously, the differentation now-urged could not be sustained, even if the issue had been raised on the property.

The objection is made also that Claimant was not apprised of the precise charge. But the notice to him stated that the investigation would be held "to determine the facts and place the responsibility" for the finding of Company property in his car. To "place the responsibility", is to place the blame, as claimant clearly understood; for in response to the question whether he had ever been arrested before this investigation, he replied:

"Yes—for the same thing—brass stealing."

While the prior charge was not established, and has no bearing on this case, Claimant's reply showed that the charge was sufficiently precise to be understood by him.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.

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