

Award No. 5012
Docket No. 4966
2-BRofC-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE BELT RAILWAY COMPANY OF CHICAGO

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Belt Railway Company of Chicago unjustly and for no due cause, discharged carman James Zettek from the services of their Company on July 7, 1965.

2. That accordingly, the carrier be ordered to return carman James Zettek to the service of the Belt Railway Company of Chicago, pay him for all time lost, plus any benefits due him under the provisions of the working agreement.

EMPLOYEES' STATEMENT OF FACTS: The Belt Railway Company of Chicago, hereinafter referred to as the carrier, has employed Mr. James Zettek, hereinafter referred to as the claimant, as a carman since January, 1946, approximately 20 years.

On June 23, 1965, at approximately 9:40 A.M. (CST) the claimant was performing his normal duties as a carman when he observed a carton of SOS pads laying on the ground near Milwaukee car 22532. He noticed the door of the car was open and so he attempted to put the carton back in the car. However, it was impossible to put it back in the car because the protective door covering was still intact, and it would be necessary to tear away this protective door covering in order to get the box back in, so the claimant put the carton down and proceeded to the office to report the carton to the checker. The checker was approaching the claimant as the claimant approached him, when an automobile drew up with two men in it. The checker and the claimant turned around together and both proceeded toward the two men, who got out of the car and who were trying to open the door of the train car, which had been closed by the claimant to protect the load while he reported the carton to the checker.

One of the men, Mr. Rauen, Lieutenant of Police, turned to the claimant and said, "What did you remove the box from the car for?" The claimant told him that he had not removed anything from the car. Mr. Rauen then

reviewing the transcript of the investigation and hearing (copy attached), Mr. Zettek did in fact without necessity or due authority remove a carton of freight from a shipment in a car while on the Belt Railway and was observed in the act by a company police department employe and nowhere is there any testimony from Mr. Zettek or others giving an acceptable reason for that act.

The discipline in the circumstances that prevailed was not unreasonable, capricious or excessive. The claim should be denied.

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 waived right of appearance at hearing thereon.

After a careful examination of the record in this dispute, we are of the opinion that it does not support the charges made against Claimant nor his resulting discharge from Carrier's service. The evidence by no means sustains the burden of proof that Claimant was the person said to have been observed removing a carton of goods from a freight car in Carrier's custody; much less did the evidence show an intent on the part of Claimant to steal the same.

The claim shall be sustained in accordance with Rule 20 of the Agreement, but the pay recovered should be less deductions for outside earnings, if any.

AWARD

Claim sustained in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December, 1966.

Keenan Printing Co., Chicago, Ill.

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