

Award No. 5043
Docket No. 4745
2-C&NW-CM-'67

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. 12, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman E. L. Jones was unjustly dealt with when dismissed from service on February 28, 1964.

2. That accordingly Carrier be ordered to restore the aforesaid Carman to service with seniority rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Carman E. L. Jones (hereinafter referred to as the claimant) was employed as such by the Chicago & North Western Railway Company, (hereinafter referred to as the carrier) at Clinton Shops, Clinton, Iowa, since July 1, 1952.

Claimant was cited for investigation on the following:

"To determine your responsibility for conduct unbecoming an employe because of embezzlement."

Hearing was held on February 28, 1964.

The claimant was dismissed from service on February 28, 1964.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective July 1, 1921, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant believes he was unjustly dealt with and accordingly this claim has been progressed as per Rule 32 which reads in part as following:

"Should any employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, he may present case to foreman . . ."

only question, then, is whether carrier was unjustified in applying Rule 700 to the present case because claimants were off duty and were apprehended while in the process of appropriating property for which another carrier was responsible. We do not think it was unjustified in so doing. Nor can we find any basis for setting aside the discipline here imposed."

In the present case, the claimant's conduct clearly warranted dismissal.

The carrier submits that the request involved in this case, is not being supported by the provisions of the controlling agreement, 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 waived right of appearance at hearing thereon.

After an investigation pursuant to notice given Claimant "To determine your responsibility for conduct unbecoming an employe because of embezzlement" he was discharged by the Carrier.

The embezzlement in question was of union funds in his position as local chairman and financial secretary of the Organization, for which felony he was admittedly sentenced by a federal court. The offense was admitted, and there is no contention that the investigation was not fair and impartial. But the Employes' position is that Claimant was unjustly dismissed because "The charge in this case of embezzlement had no connection with this Carrier nor were they in any way affected, therefore, it was outside their jurisdiction to take any action whatever against Claimant."

No precedent is cited nor reason given in support of this contention that the Carrier must keep a proven thief or embezzler in its employ unless the theft or embezzlement was of its property.

On the contrary, this Division has upheld the Carrier's right to discharge an employee for a crime even though it was not committed against the Carrier. Awards 1860 and 2787. Nothing in the Agreement deprives the Carrier of the right to protect itself and its workers by eliminating dishonest or criminal employees, whether or not it has adopted an operating rule so providing.

In this instance the Carrier would apparently have been embarrassed if it had not taken this action, in view of a statement by a high officer of the Organization published in its journal shortly before this claim was brought to the Board. With reference to the Carrier's manager of the shops at which Claimant was employed the Brotherhood's officer said:

"He evidently 'got along' with the former local chairman-financial secretary convicted of stealing a substantial amount of money from

Lodge 429, and is certainly not co-operating with the present officers who are trying to correct the situations developed during the tenure of the confessed and convicted thief."

The Claimant was not unjustly dismissed.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 3rd day of February, 1967.