

Award No. 5398**Docket No. 5279****2-HB&T-MA-'68****NATIONAL RAILROAD ADJUSTMENT BOARD****SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

THE HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Machinist Michael Winn was improperly and unjustly discharged from the Carrier's service effective October 22, 1965.

2. That accordingly, the Carrier be ordered to reinstate the aforementioned employe to the service with all seniority, vacation, free transportation, and employment rights unimpaired and compensate him for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Machinist Michael Winn, hereinafter referred to as the Claimant, was employed by the Houston Belt and Terminal Railway Company, hereinafter referred to as the Carrier, with seniority date of March 22, 1943.

On May 17, 1965, while working without Helper on M. P. Unit No. 310, Claimant's eyeglasses were broken as a result of accident while making repairs to Unit. In line with past practice, the Claimant turned the glasses over to General Roundhouse Foreman for handling, and approximately two weeks later, when he found that the glasses had not been turned over to the Claim Department, he put them in an envelope, along with a note, and mailed same to that Department. He was later required to make an accident report, and several days later his wife was requested by telephone to advise the cost of the broken glasses. Failing to find the receipts for them, she asked the doctor for a duplicate copy of receipts for glasses which were purchased in 1964. Two copies of the bill for the glasses were sent to Mrs. Winn, and she forwarded them to the Claim Agent.

Claimant was notified under date of June 29th that formal investigation would be held July 7, 1965 to develop facts and place responsibility in connection with report that he had requested reimbursement in the amount of \$47.00 for replacement of eye glasses broken while on duty May 17, 1965. Request was made on July 1st for postponement until July 23rd so that General Chairman would be available, and request was granted. However,

60-HB (Exhibit No. 3) show the glasses broken on May 17, 1965. Claimant's testimony, on page 17, is to the fact that the broken glasses were glasses obtained in 1964.

The notarized statement of Dr. Cheatham furnished post-factum with General Chairman's letter of January 3, 1966, sheds no new light on the facts developed in the investigation. In fact, they support the finding of the investigation and under date of January 27, 1966, the appeal officer advised the General Chairman that in light of the affidavit submitted that he had reread the investigation to correlate the information and that the affidavit only confirms what the investigation developed. In fact, the affidavit serves only to confirm, as was explained in reply to General Chairman, that the glasses which Claimant attempted to use as means of collecting a claim for \$47.00, were no longer of value to Claimant and that on examination he had been advised by two eye specialists to obtain replacement glasses.

Carrier is sure that a careful reading of the transcript of the investigation supports the facts that a claim was presented to this Carrier in an attempt to collect \$47.00, and that in the normal processing of this claim a discrepancy developed between the date of the alleged accident and the information furnished by the doctor indicating date of services and date of delivery of the glasses which proved conclusively that Claimant did obtain replacement glasses 38 days prior to the alleged breaking of his glasses.

Any attempt, no matter how veiled, to collect money not properly due can only be classified as an attempt to defraud. Carrier feels sure that your Honorable Board will sustain its action, which action is dictated by Carrier's necessity to protect itself against fraudulent action. Carrier affirmatively states that all matters submitted to your Honorable Board have been handled with the General Chairman by correspondence and in direct conference.

Carrier urges a denial award.

(Exhibits not reproduced.)

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.

On October 22, 1965, Claimant was dismissed from service for misrepresentation of facts in connection with claim for replacement of broken eye glasses. On May 17, 1965, while working as a machinist, Claimant's eye glasses were broken as a result of an accident while making repairs to a unit. A claim was filed and his wife was requested by telephone to advise the cost of the glasses. An undated statement was obtained from the optometrist in the amount of \$47.00. Subsequently, the Carrier contacted the optometrist and obtained a dated statement for \$47.00 for services rendered on April 9, 1965. This statement indicated that glasses had been purchased 38 days prior to the date of the incident, for which the Claimant was seeking to have the Carrier

pay for these glasses, rather than, the glasses broken while at work. An investigation was held and the claimant was dismissed from service. Later the claimant submitted an affidavit from the optometrist that on March 30, 1964, glasses were made for the Claimant, cost \$47 and these were the glasses broken on May 17, 1965. The glasses made on April 9, 1965 cost \$47 were an additional pair of glasses. Thus the carrier had two statements for glasses: one undated statement for \$47, another statement dated April 9, 1965 for \$47 which they obtained on their own initiative. At this point the record reveals no misrepresentation. The claimant made no statements that were untrue. The only question was the original cost of the glasses or their replacement cost. This information would have to come from the Optometrist. Nothing in the record shows that the claimant presented a statement for glasses purchased April 9, 1965. At the time of the accident the claimant gave the glasses to the foreman and later presented them to the claims department where they could be observed. The carrier obtained the statement dated for services April 9, 1965. A telephone call or letter to the optometrist for a corrected statement or a clarification could have solved the matter.

Thus the record further reveals no false statements or written documents, as accident reports or statements from the optometrist by the claimant. This type of evidence would be necessary to support a charge of misrepresentation.

The record reveals that the glasses were broken during employment. This fact is not denied in the record. The statement for services dated April 9, 1965 did not apply to the glasses damaged on May 17, 1965. This statement of services was obtained from the optometrist by the carrier and the record does not reveal whether the claimant had an opportunity to examine it prior to the investigation. The affidavit of the optometrist states that services were rendered on March 30, 1964 and the statement supplied by the claimant's wife for \$47 for services could have applied to the glasses received at that time and broken on May 17, 1965.

The record in this case is not sufficient to justify the carrier's action; thus the claimant should be compensated for all time lost less earnings in other employment and any other benefits he is entitled to and his record cleared accordingly.

AWARD

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1968.