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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6532
Docket No. 6334
2-SB-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (South Buffalo Joint Protective Board
(A. F. of L. - C. I. O. - Carman
(
(South Buffalo Railway Company

Dispute: Claim of Employees:

- I. a) That the South Buffalo Railway Company unjustly suspended Carman Robert A. Burger from service for thirty (30) days.
- b) That the South Buffalo Railway Company unjustly dismissed Carman James F. Cochrane from service, effective September 10, 1971.
- II. a) That the South Buffalo Railway Company delete from Carman Robert A. Burger's service record the thirty (30) day actual suspension, and make him whole for any losses he has suffered, which includes compensation for the thirty (30) day period he was held out of service, Sub-Insurance and Health Benefits, vacation and seniority rights unimpaired, etc. etc.
- b) That the South Buffalo Railway Company rescind the dismissal from service of Carman James F. Cochran, that the dismissal be stricken from his service record, and that he be made whole for any losses he has suffered from date of dismissal, effective September 10, 1971.

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.

Claimants were charged with:

Taking without authority and removing by truck, new lumber, property of Bethlehem Steel Corporation, for use in construction of new Sub-Station west of Bethlehem Steel Corporation 48" Mill Hot Bed as listed below:

19 pieces of 2" x 4" x 16'
3 pieces of 2" x 12" x 16'
4 pieces of 1" x 6" x 16'
3 pieces of 4" x 4" x 16'
2 pieces of 4" x 4" x 14'
1 piece of 4" x 4" x 12'

at about 9:00 A.M. on July 25, 1971 while assigned as Carmen, respectively, on 7:30 AM to 3:30 PM shift, July 25, 1971.

Claimants were afforded a hearing on the charge September 10, 1971 at which they were present, duly represented, and witnesses were subject to cross-examination.

The record of said hearing fully established that Claimants removed from premises of the Carrier's parent Company the merchandise referred to, without authority from anyone authorized to give same. It must therefore be held that the charge was proved with probative evidence. Petitioner's contention that the charge was not "precise" lacks merit and is rejected.

Claimants are subject to the basic concept set forth in Awards of this Board too numerous to cite that it is incumbent upon Carriers and their employees to protect the property of those who utilize their services. It is impossible to adhere to Petitioner's view that claimants did no wrong in that they took merchandise belonging to a consignee of the Carrier to allegedly be used for the advantage and eventual enjoyment of Carrier's employees, albeit on Carrier's premises. Claimants could have easily ascertained whether the lumber was available for purposes they claimed. Their unilateral action was inconsistent with their employment status.

In Award 6368, this Board enunciated the limitations of its authority relative to discipline cases as follows:

"Our function, ... is to review the record, ascertain whether the Controlling Agreement had been complied with; the Claimants were afforded due process; there was substantial evidence to sustain a finding of just and sufficient cause for the discipline imposed; and that the action taken by Carrier was not arbitrary, capricious or unreasonable."

In Award 6196, we stated:

"In judging the above, mindful that the Carrier has the burden of proving its charge and of showing its conduct and decision were not unreasonable, the Board will not go beyond the record developed at the Carrier's investigation."

Claimant Cochran herein had shortly prior to the incident herein involved, been granted reinstatement on a leniency basis, after intervention in his behalf by his Organization, following his discharge in September 1968 for feloniously stealing Carrier's property. Petitioner prevailed upon Carrier to afford him another chance and Claimant signed a statement that he would "not comit another act of misconduct in the future". His July 25, 1971 conduct was clearly inconsistent with the understanding and agreement which resulted in his reinstatement effective September 30, 1968.

This Board has stated and reiterated in Award 6196 (Quinn), the following:

"This Board does not presume to substitute its judgment for that of a Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. A Carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory ... when the degree of discipline is not reasonably related to the seriousness of the proven offense." Award 6198 (See also Awards 4195, 4098, 4000, and 3874.)

Based upon the record, Carrier satisfied the criteria for sustaining the discipline imposed upon claimants.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1973.