

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 44, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Clinchfield Railroad Company

Dispute: Claim of Employees:

1. That the Clinchfield Railroad Company improperly dismissed Carman Thomas J. Runion from service effective September 8, 1972.
2. That accordingly, the Clinchfield Railroad Company be ordered to restore Carman Runion to service with all seniority and vacation rights unimpaired and compensate him for lost wages.

Findings

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was dismissed from Carrier's service after investigation and hearing for violation of those portions of Rule G-1 pertaining to disloyalty and dishonesty and Rule 816, "in connection with stealing railroad journal brass in 1970, 1971 and 1972 which was the property of Clinchfield Railroad Company and Erwin Salvage Company ***."

While Claimant admitted having stolen journal brass from the Erwin Salvage Company, he vigorously denied taking any Carrier property. The Organization takes the position that since there was no proof of theft from Carrier, the charge must fail.

The Board disagrees. The disloyalty and dishonesty referred to in Rule G-1 are not restricted to Carrier's property, and Carrier should be under no obligation to continue a confessed felon in its service under these circumstances.

In Second Division Award No. 5043 the Board said:

"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 Employees' 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.

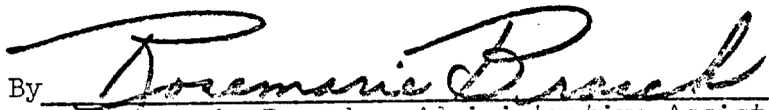
"On the contrary, this Division has upheld the Carrier's right to discharge an employee for a crime even though it was not committed against the Carrier. Awards 1860 and 2787. Nothing in the agreement deprives the Carrier of the right to protect itself and its workers by eliminating dishonest or criminal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

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of May, 1975.