

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That under the terms of the Agreement, Machinist J. L. Combs was improperly and unjustly dismissed from all service with the Norfolk and Western Railway Company.
2. That accordingly, the Norfolk and Western Railway Company be ordered to compensate Machinist J. L. Combs in the amount of eight (8) hours at the pro rata rate for each day of his work week assignment beginning on the date of June 26, 1973.
3. And further, that he be restored to service with all rights unimpaired, health and welfare benefits restored and paid for during the time he is held out of service and all seniority and vacation rights restored as if he had continued in the employment of the Norfolk and Western Railway Company.

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.

Claimant was charged with the unauthorized removal of Company property at Carrier's Roanoke Shops on the evening of May 31, 1973, and following a hearing held relative to the charge, claimant was dismissed from service with the Carrier.

At the foregoing hearing Shop Night Watchman Bandy testified that at 8:00 PM on May 31, 1973 he observed a parcel lying beside the roadway, in a white rag, underneath a car. Upon bringing this to the attention of Special Officer Sowder he was instructed by Sowder to watch the package in order to determine who proceeds to pick it up. At approximately 11:00 PM claimant picked up the package and proceeded toward the parking lot where his truck was parked. Bandy stated that claimant dropped the parcel when he noticed him approaching. While claimant admits having picked up the parcel, he denies any intention of removing it from the property. Rather, he claims he merely picked it up to remove it from the roadway and threw it on an adjacent scrap pile.

While it is axiomatic that the unauthorized removal of property is a serious offense in the Railroad industry justifying dismissal of one found guilty thereof, it is equally axiomatic that it is not sufficient for Carrier to merely allege that such took place. Rather, Carrier must prove it by substantive evidence. In the claim at bar we conclude that Carrier has sustained the burden imposed upon it.

The hearing reveals that claimant picked up a 70 lb. parcel of scrap, mostly brass, from underneath a car, and proceeded to his truck when within 10 to 15 feet thereof he dropped it when he noticed Watchman Bandy approaching. In spite of claimant's protest to the contrary, Carrier concluded that claimant intended to remove this parcel from the property. We believe that Carrier's conclusion was founded on substantive evidence and we are loath to question it. That claimant never actually removed the parcel from the property is irrelevant. Carrier concluded that he had the intent to so remove it and this conclusion was supported by the record.

We cannot find support for the Organization's contention that Carrier entrapped claimant by allowing the parcel to remain on the ground for three hours. Nor can we find that claimant was deprived of any procedural or substantive rights by the manner in which the hearing was conducted. Both he and his representative were allowed ample opportunity to present their defense to the charge and, in the opinion of this Board, they fully availed themselves of it. There is no support for the claim and it must therefore be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of June, 1975.