

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 8, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement Carman M. L. Johnson was unjustly dealt with when he was pulled out of service of the Missouri-Kansas-Texas Railroad Company at Glen Park, Kansas, beginning with the date of December 19, 1975, and was improperly dismissed from service as result of investigation held on December 23, 1975.
2. That accordingly the Missouri-Kansas-Texas Railroad Company at Glen Park, Kansas, be ordered to compensate Carman J. L. Johnson for all time lost, seniority and vacation rights unimpaired, made whole for all other benefits he would have earned beginning with the date of December 19, 1975 until returned to service as Carman at Glen Park, Kansas.

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 suspended from service and subsequently, following a hearing, dismissed from service for attempted theft of grain in violation of Rule 3 which reads in part:

"Employes must not be ... (4) Dishonest."

Review of the record indicates clearly that the Claimant offered no reasonable explanation for his possession of a barrel of grain and its placement in a tool room. Observations of his movement by a Carrier Special Agent were uncontradicted. Further, by his own testimony, the Claimant indicated his awareness of the particular seriousness of possession or handling of grain on the Carrier's property. There are no grounds whatsoever for disturbing the disciplinary action taken by the Carrier.

In this claim, the Organization raises a further question as to the propriety of suspending the Claimant at the time the incident occurred, rather than awaiting the results of an investigative hearing.

Rule 26(a) reads as follows:

"(a) No employe who has been in the service sixty (60) days or more, will be disciplined without just and sufficient cause and not until first being given an investigation, prior to which the employe and his duly authorized representative will be advised of the precise charge and given opportunity to obtain the presence of witnesses, if desired. If stenographic report of investigations is taken, the Committee shall be furnished a copy. Suspension in proper cases pending an investigation, which shall be held promptly, shall not be deemed as violation of this rule."

Suspension prior to hearing must be limited to "proper cases". In this instance, the Carrier had grave suspicions (later confirmed to its satisfaction) that one of its employees was intending to commit theft while on duty. Surely this is a "proper case", involving the wish to remove an alleged thief from company property. It is the type of behavior for which the opportunity for repetition need not be permitted pending investigation and adjudication.

Had the subsequent hearing cleared the Claimant of the charges, ample remedy would have been available in a sustained claim of reimbursement for lost wages during the period of suspension.

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 15th day of November, 1977.