

Numerous awards have held that a Carrier is free to sell its property and such a sale would not violate Classification of Work Rules. The basic issue in such cases is whether the primary purpose of the agreement is a sale or is it a contracting out of work covered by a Classification of Work Rule. In this case, the agreement includes a firm price which tends to show a sale. On the other hand, the term requiring the return of reusable parts tends to show the Carrier was contracting out the work. Given these terms in the agreement, the Carrier was receiving the same benefits from the outside firm that it would have received from the Claimants had they performed the work. The purpose of the agreement therefore appears to be primarily a contracting out of work rather than a sale of property. See Second Division Awards 6529 and 6800.

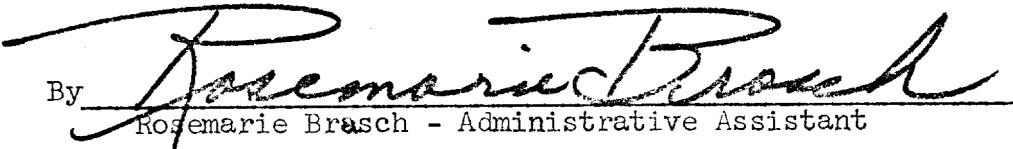
A W A R D

Claim sustained at pro rata rate.

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 15th day of August, 1978.

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Carmen W. M. Baxter and H. L. Money were dismissed from service in violation of the current agreement on July 24, 1975, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
 - (a) Restore them to service with seniority and all employee rights unimpaired.
 - (b) Compensate them for all time lost as a result of their dismissal with interest at the rate of 6% per annum on all money due them, and
 - (c) Pay premiums for their hospital, surgical, medical group life insurance and supplemental sickness benefits for the entire time they are withheld from service.

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.

The record evidences a fully developed and complete investigation and hearing on the charge that the Claimants were found improperly in possession of interstate shipment of two televisions each. The record indicates that both Claimants were afforded an opportunity to speak in their own defense,

but opted to do otherwise. Review of the facts brought out support the Carrier's decision to dismiss the Claimants. The subsequent dismissal of action against the Claimants in civil proceedings is not controlling here; the rules of evidence and other juridical procedures do not apply to arbitration proceedings. It is enough to say that the record substantiates the appropriateness of the Carrier's actions.

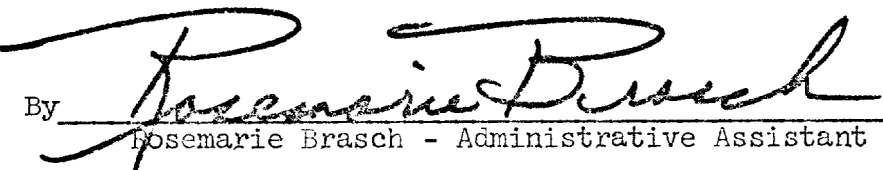
A W A R D

Claims are denied.

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Attest: Executive Secretary
National Railroad Adjustment Board

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Rosemarie Brasch - Administrative Assistant

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