

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the current Agreement, particularly Rule 35, when on August 30, 1977 Electrician G. W. White was unjustly dismissed from service at Springfield, Missouri.
2. That the St. Louis-San Francisco Railway Company further violated Rule 35 by not affording G. W. White a fair and impartial hearing.
3. That Electrician G. W. White be made whole because of the improper action of the St. Louis-San Francisco Railway Company, to be reinstated to service with his seniority rights unimpaired, paid for loss of wages and be compensated for all other benefits (including insurance, vacation, Railroad Retirement) and all other rights due him.

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 dismissed, following a hearing, for attempting to steal 6 cans of oil and one oil filter. A Carrier Special Agent testified that he saw Claimant with a carton under his arm walking out of the building toward the parking lot but that Claimant then saw him, whirled around and quickly returned to the shop, left the carton, and exited by another door. Another employee testified that he saw Claimant leave the shop with the carton, return and set it down, whereupon he picked it up after Claimant "got out of sight," to hide it from Claimant so as to return the carton to stock. Carrier's Special Agent also testified that Claimant's fingerprints were on the oil cans.

At the hearing, Claimant stated that he was using the oil and filter for work on an 800 class locomotive, but the record shows that he was not assigned to this class locomotive on that day nor did he know the oil capacity of this type locomotive.

The Organization takes the position that the Claimant could not be charged with stealing because he did not leave Carrier's property. The Carrier need not show that the Claimant left the property to prove theft or intent to steal. The Carrier need only show substantial evidence of the Claimant's intent to convert this property to his own control, use or possession. The hearing transcript reveals that upon sighting of the Special Agent, Claimant quickly reversed his direction and returned to the shop as if he had something to hide. The Organization offered no explanation for this behavior.

Testimony was also offered by another employee, who stated that he, too, believed Claimant was stealing the oil.

Finally, Claimant had no reason to be carrying the carton of oil and the oil filter since his work assignment at the time did not require the use of the oil. The Organization offered no plausible explanation as to why Claimant had the oil in his possession. As stated in Award 3590 (Referee James P. Carey, Jr.):

"Unexplained possession of property prima facie belonging to another may support a presumption that it has been wrongfully taken. The probable truth of Claimant's explanation was for the Carrier to determine."

The Board, in Award 6875 (Referee Robert M. O'Brien) stated:

"That Claimant never actually removed the parcel from the property is irrelevant."

This Board finds that Carrier has established its case against the Claimant. The burden is on the Organization to show that discipline was arbitrary and capricious. This the Organization has not done and, consequently, the claim must be denied.

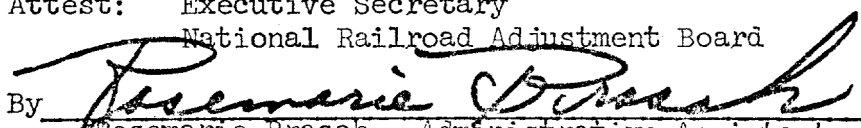
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of December, 1978.