

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 25, Railway Employees'
(Department, A. F. of L. - C. I O.
((Carmen)
(Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated the controlling agreement when they unjustly suspended Setup Carmen Clyde Swift, Jr. from service by letter dated December 17, 1975, and dismissed him by letter dated April 14, 1976 as a result of investigation which commenced on March 24, 1976 and concluded on March 30, 1976.
2. That accordingly, the Terminal Railroad Association of St. Louis be ordered to restore Setup Carmen Clyde Swift, Jr. to service with seniority unimpaired, and that he be compensated for all lost time plus interest.

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 employees 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 discharged following a hearing held in March of 1976 (after being postponed from December, 1975 at the request of the Organization) for falsification of work reports which occurred in May of 1973. Carrier avers that the basis for the long delay in bringing disciplinary action was that it was unaware of claimant's actions until an Interstate Commerce Commission official apprised them of the falsified work records in late 1975.

Specifically, the evidence in this case is virtually all circumstantial, but Carrier's thorough review of the material facts and circumstances strongly supports the conclusion that claimant wrongfully reported as

straightening ends on cars on inbound trains being interchanged from and to other railroads, when in fact, he did not perform this work. The records of Carrier and the Interstate Commerce Commission clearly demonstrates that none of the cars which claimant reported as having performed end straightening work were ever in the possession of Carrier or that the work had been done. The foreign line trains were only on Carrier's property a short time -- an hour or less in most instances -- and it would have been impossible in that period of time for Claimant or for that matter, other carsmen to have performed the work on ten (10) to twenty (20) cars -- as claimant's tally book showed. This compelling finding coupled with other supportive evidence firmly establishes his guilt.

It is also alleged that Carrier's charges were untimely filed, since they were preferred in December of 1975, one (1) year and one half ($\frac{1}{2}$) after the occurrence of the incident. In this connection, we believe that Carrier complied with the purpose of the agreement, which requires Carrier to initiate charges within a reasonable time after it has knowledge of an asserted violation. Otherwise, it would amount to an injudicious fishing expedition which is clearly apposite the intended application of agreement language.

In the instant case, the record shows that Carrier promptly undertook disciplinary action immediately after receiving sufficient notice and advice from Interstate Commerce Commission officials, et al, that a serious offense occurred. It was appropriately responsive behavior consistent with agreement requirements. Moreover, Carrier granted claimant several postponements to give him ample time to prepare his defense.

The additional allegation that Carrier didn't call members of the train crews and others as witnesses is without merit. These persons had no direct knowledge of whether or not claimant performed the disputed work on their trains.

Claimant committed a serious infraction, which is palpably unacceptable in our industry. What is puzzling about this behavior is the apparent lack of motive for this impropriety. The record does not show that claimant sought or contemplated any personal gain by his actions. It was, plainly speaking, senseless misconduct. On this narrow basis and in view of the unique particularities of this case, we are inclined to conclude that the two years claimant has now been unemployed, suffices as commensurate punishment for his infraction. We will therefore reinstate him without pay for time lost and admonish him in no uncertain terms that any future acts of falsification or dishonesty, irrespective of motive, will result in permanent dismissal.

A W A R D

Claim sustained to the extent indicated in the opinion.

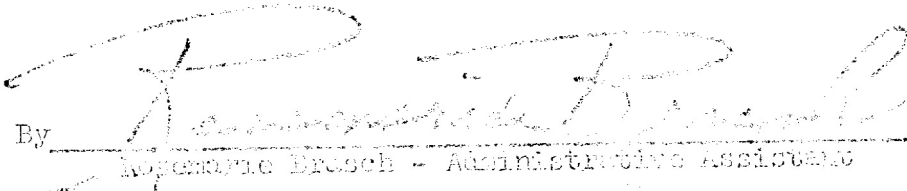
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Award No. 7801
Docket No. 7547
2-TRRAofStL-CM-'79

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brosch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of January, 1979.