

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. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line unjustly, improperly, and without supporting the burden of proof, dismissed Electrician D. L. Bush from service beginning November 16, 1976.
2. That, accordingly, the Carrier be ordered to remove this unjust and improper dismissal from the service record of Claimant and compensate him for all time lost in connection therewith, beginning November 16, 1976 through and including such date as he is properly restored to the service of the Carrier.
3. In addition, that Claimant be reinstated with all seniority rights, vacation rights and privileges, insurance rights and protection as well as all other compensation lost as a result of this improper and unjust dismissal.

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.

An investigative hearing was held on October 27, 1976 to determine claimant's responsibility in connection with the unauthorized removal of items from Carrier's Hialeah, Florida facility. The hearing officer found Claimant guilty of the charged specifications and he was subsequently apprised by letter dated November 16, 1976 that he was dismissed from service.

In his defense, Claimant argues that Carrier failed to meet its required proof burden by its inability to develop clearly that he unlawfully removed said items from Carrier's property and its failure to provide a fair hearing consistent with Agreement Rule 32. He asserts that Carrier additionally imposed differential punishment penalties on the other employees implicated in the investigation.

Carrier contends that claimant was not only provided with a fair and impartial hearing within the definitional requirements of Rule 32, but also was proven guilty of the charges by a preponderance of solid probative evidence. It argues that claimant's attempt to analogize the particulars of his situation with other implicated employees fails to provide comparable fact specifics. It concluded that claimant's incriminating admissions were dispositive of the issue.

This Board has carefully reviewed the record to determine whether or not claimant was afforded a fair and impartial hearing. We find nothing in the investigative transcript that would indicate the presence of bias, prejudice or selective disciplinary treatment. Claimant was provided a disciplinary hearing that squarely complied with the manifest intent of Rule 32 (Supra) and was found guilty of the charges. We cannot, under these circumstances, modify or reverse, in the absence of palpable error or explicit capriciousness, Carrier's decision to terminate claimant's employment. He was found guilty of a very serious charge, that was supported by the evidence and we cannot expect Carrier to countenance lightly this type of deportment.

Accordingly, based on the record and on our consistent application of the decisional principle, "that an employer is entitled to expect its employees to be honest" (See Second Division Award 5043), we will deny the claim.

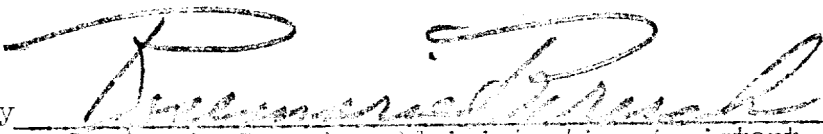
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brusch - Administrative Assistant

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