

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: ( System Federation No. 16, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement when it unjustly dismissed Carman R. A. Harvey from service as a result of investigation held October 5, 1976, at Bellevue, Ohio.
2. That the Norfolk and Western Railway Company be ordered to reinstate Carman R. A. Harvey, compensate him for all time lost beginning November 5, 1976, and make him whole for all seniority rights, vacation rights, and all other rights and privileges due him as an employee of the carrier had he not been unjustly dismissed.

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 had been employed as a Carman at its Bellevue, Ohio facility for some eight and one-half ( $8\frac{1}{2}$ ) years. He was arrested August 17, 1976, along with another man, for petty theft (removal of a tent from a Bellevue store). An article thereof appeared in the Bellevue Gazette August 18, 1976. Claimant subsequently entered a plea of guilty to a charge of petty theft and was fined \$250.

Claimant was charged with conduct unbecoming an employee and given a formal investigation thereon. As a result thereof, Carrier concluded that he was guilty as charged. Claimant was dismissed from service as discipline therefor.

Claimant was afforded due process. The evidence adduced, including Claimant's admissions, clearly support the conclusions reached by Carrier. It reflects that Claimant Carman also held a part time job with a store in Bellevue and that he unauthorizedly removed merchandise therefrom. Claimant was apprehended and pled guilty thereto.

Claimant's conduct was in violation of Bulletin 26-5, issued at Bellevue June 25, 1974, reading:

"All Concerned....

Car Inspectors' Bldg. Rt. 4.

Effective with the issuance of this bulletin, the following rule is in effect:

The conduct of any employee leading to conviction of any misdemeanor involving moral turpitude (including without limitation, the unlawful use, possession, transportation or distribution of narcotics or dangerous drugs) or of any felony is prohibited. ..."

By whatever name such act may be labeled, it remains a dishonest act. Carrier, particularly as a common Carrier, should not employ, keep, or be required to keep, in its employe a dishonest employee. There is no cause in the record to conclude that Carrier had acted arbitrarily or capriciously in discharging Claimant. This claim will 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 7th day of February, 1979.