

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

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
(  
( Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That under the terms of the Agreement, Machinist William Baechle was unjustly suspended from the service of The Alton and Southern Railway Company on the date of July 1, 1976, pending investigation. Investigation was completed on the date of August 18, 1976, on the date of August 20, 1976, he was notified that he was dismissed from the service of The Alton and Southern Railway Company as of August 20, 1976.
2. That accordingly, The Alton and Southern Railway Company be ordered to compensate Machinist William Baechle in the amount of eight (8) hours at the pro rata rate for each day of his work week assignment beginning on the date of July 1, 1976, with 6% annual interest.
3. And, Further, that he be restored to services, with all rights unimpaired, health and welfare benefits restored and paid for during the time he is held out of service and all seniority and vacation rights restored as if he had continued in the employment of The Alton and Southern Railway Company.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, a machinist with almost fourteen years service as of June 30, 1976, was regularly assigned and working on the third shift, 11:00 PM to 7:00 AM at Carrier's East St. Louis Mechanical facility. His primary responsibility was the inspection and maintenance of diesel locomotives at Carrier's Roundhouse.

Carrier's Chief Special Agent, about 11:30 PM on June 30, 1976, observed two persons, later determined to be employees, removing merchandise which had spilled out of a trailer and onto the flat car on which the trailer was loaded. One of such employees was observed to have placed a carton of merchandise in the trunk of his automobile, close the trunk and then drive away from the location of the trailer and flat car. Another Special Agent intercepted this car and in the presence of various police and Trainmaster had the driver identify himself and open the trunk of his car. Therein a box taken from Trailer MOLI 290988 was found and contained three portable barbeque grills or hibachis. The police thereafter went to the employees locker room at the Roundhouse and placed same under railroad police charge.

The employees whose car had been intercepted was identified as Mr. Eugene Stanford, a sheet metal worker. He made and signed a written statement, in the presence of witnesses, which implicated therein several other employees. One of such employees named was the Claimant Machinist, W. Baechle. Mr. Stanford attested that he saw Claimant, among several other employees who came into the lunch room with two boxes of charcoal burners. According to him, they allegedly stated that such boxes came from a flat car with trailer. These employees carried said boxes into the locker room.

The police conducted an inspection of the locker room during which a total of seven (7) more hibachis were found. Although Claimant's locker was searched, no hibachis were found therein.

Notice of a formal investigation was given to Claimant and another Machinist, the Sheet Metal Worker, Mr. Stanford, a Caboose Supply Man, and a Car Foreman, advising therein that the purpose thereof was:

"To develop the facts and place your responsibility, if any in connection with the removal of merchandise from container No. MOLI 290988 on Car TTAX 974353 located on the Rip Runner Track directly adjacent to Mechanical Building Lunch Room at or about 11:50 PM, June 30, 1976."

The investigation scheduled for July 7, was postponed and held on July 14, 1976. The investigation was continued until August 11th was again postponed and finally concluded on August 17, 1976.

Thereafter, Claimant was advised under date of August 20, 1976:

"The investigation developed through a signed statement from an employee present that you were seen going into the lunch room with a box of merchandise that had been removed from Container No. MOLI 290988.

"Your personal record is, effective this date, assessed with dismissal for the above reasons."

The Board finds that Claimant was accorded the procedural benefits prescribed in Rule 19 of the Agreement. It has been so well established as to not here heed citation of authority therefor that an investigation is not a proceeding which is conducted with the same requirements that govern a court proceeding. There is no contractual requirement that the Carrier need furnish Claimant, or his Representative copy of the primary evidence which will be used against Claimant prior to the holding of an investigation. Notwithstanding, Claimant's Representative did receive a copy of Sheet Metal Worker Stanford's statement prior to the hearing.

The objection as to the use of notes by several Carrier witnesses which had not been furnished in advance to the Claimant's Representative must likewise fall. In fact, the procedural objections raised are but pinpoints with no significance. We are guided by this Board's Award 6806 (Eischen) which held:

"It should be well understood that our Board does not ... considered matters not raised and properly joined in handling on the property."

Claimant was duly notified. He had been advised of the nature and substance of the incident under investigation and had thereby been placed on notice. Claimant had a Representative, and, in fact, personally participated in the investigation by questioning the witnesses, answering questions, and making statements.

The Board will not resolve conflicts in testimony of witnesses for that is a function reserved to the trier of the facts. Sufficient evidence, albeit circumstantial was adduced to support Carrier's conclusion as to Claimant's guilt. The Sheet Metal Worker, Mr. Stanford, incriminated Claimant as well as another Machinist. The police found three hibachis in the other Machinist's locker. The absence of the hibachi from Claimant's locker didn't lessen the strength of such incriminating statement. The record is absent rationale as to why Claimant was so implicated. Sheet Metal Worker Stanford's efforts to recant his previously witnessed incriminating statement does not serve to make such statement invalid. The record speaks contrary to his misguided efforts. We therefore find substantial evidence of record supporting Carrier's finding that Claimant had responsibility in this case.

The nature of the offense committed is such that assessing dismissal as discipline therefor is warranted. The theft or participation in the theft by receipt of stolen goods which had been entrusted to Carrier serves to weaken the stability of a Company. It attacks the foundation of the employer-customer relationship which is based on shipper confidence while concurrently violating a fundamental basis of the employer-employee relationship, to wit - honesty. We are not disposed to interfere with the discipline

assessed. However, the Fourth Division, in its Award No. 3566 which involved the case of the Car Foreman who had witnessed the theft, and turned his back thereon but who had requested two hibachis, was reinstated to service without back pay. We, too, in such circumstance, will reinstate Claimant to service with all rights unimpaired, but without any pay for time out of service subject to his passing the usual and necessary return to service examinations.

The other aspects contained in the Statement of Claim are denied on the basis that there is no supporting Agreement provisions therefor. Such claims do not arise under the Agreement and therefore the Board is precluded from having authority to pass thereon.

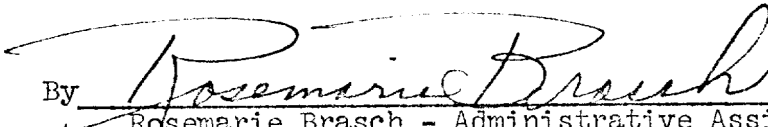
A W A R D

Claim disposed of as per findings.

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 16th day of May, 1979.