

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O
((Carmen)
(Louisville and Nashville Railroad Company

Dispute: Claim of Employee:

1. That Carman C. R. Schultz was illegally suspended from service on June 9, 1976, and was then dismissed from service in violation of the current agreement on June 25, 1976 and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
 - (a) Restore him to service with seniority and all employee rights unimpaired.
 - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
 - (c) Pay premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld from service.

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 employed as Carman at Carrier's Strawberry Yards, Louisville, Kentucky. Under date of June 9, 1976 he was suspended from service pending investigation into charges reading as follows:

"In connection with your arrest by the Jefferson County Police on February 24, 1976 on charges of theft by unlawfully taking over \$100.00 and receiving stolen property, you are charged with conduct unbecoming an employee in that you pleaded guilty in Jefferson Circuit Court, Criminal Division No. 1 on June 4, 1976 to an amended charge of receiving stolen property under \$100.00."

Following investigation, at which he was represented by the Organization, Claimant was dismissed for conduct unbecoming an employee. Therefore, the instant claim was filed and processed on the property without settlement.

The record shows that Claimant was one of several employees arrested by Jefferson County Police on various charges of theft from interstate shipments moving via Carrier's line, as well as theft of various items of Carrier's own property. He pled guilty to a reduced charge of receiving stolen property and received a suspended jail sentence of 6 months. His sole defense to the prima facie case presented against him at the Carrier's hearing and investigation was that he had purchased all of the items in question from an establishment known as "Crazy Red's". Absent his own basic assertion there is no evidence whatsoever on the record to support this defense. None of the alleged receipts were produced and indeed, the very existence of "Crazy Red's" remains doubtful on this record. We cannot conclude that Carrier acted arbitrarily and unreasonably in finding Claimant guilty as charged and in rejecting his defense. Nor considering the seriousness of the offense involved, can we deem the penalty of dismissal overly harsh or inappropriate.

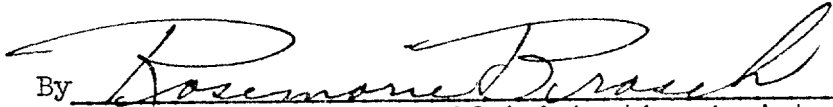
A W A R D

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 16th day of May, 1979.