

The Second Division consisted of the regular members and in addition Referee Bernard Cushman when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That under the current agreement, electrician R. B. Lloyd, Jr., was unjustly dismissed from the service of the National Railroad Passenger Corporation (AMTRAK) effective September 21, 1977.
2. That, accordingly, the National Railroad Passenger Corporation (AMTRAK) be ordered to: 1. Have the charge cleared from the record of electrician R. B. Lloyd; 2. That electrician R. B. Lloyd be reinstated with all rights unimpaired and reimbursed for net wages lost.

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.

The Claimant, R. B. Lloyd, Jr., was employed by the National Railroad Passenger Corporation (AMTRAK), hereafter referred to as "the Carrier", at their Wilmington, Delaware shops in the capacity of electrician. At the time of his dismissal from service, he had been employed for approximately three years. By letter dated August 25, 1977, the Claimant was notified to appear for a formal investigation on August 31, 1977, with a charge that he had violated Rule I of the N.R.P.C. Rules of Conduct in that:

"On August 25, 1977 at approximately 3:07 AM you were observed securing company property (20 rolls of masking tape) in the rear of your automobile located at Car Shop No. 1 Parking lot."

The investigation was held on September 12, 1977. By letter dated September 21, the Claimant was notified that he was dismissed immediately.

At the investigation the Claimant testified and admitted that he had placed 20 rolls of masking tape which was the property of AMTRAK in his automobile with the intention of using it to tape a car that he was going to paint. He described the car as a personal road vehicle.

The Organization contended that the Claimant was denied a fair hearing because the Hearing Officer refused to recall a policeman to the stand in order to allow the Claimant's representative to question the policeman as to a conversation which he had previously testified he had with the Claimant's Foreman. The representative desired to question the policeman as to whether the Claimant's Foreman had told the policeman that he had observed an individual believed to be the Claimant loading a box of tape onto a fork lift and then driving the fork lift to the parking lot area and returning a few moments later without the box of Company property. In view of the Claimant's admissions as stated above, the failure to allow the recall of the policeman was obviously nonprejudicial. The Organization also contends that the record does not support the charge that the Claimant was observed securing masking tape in the rear of his automobile. Again, in the light of the Claimant's admission that he himself placed the masking tape in his automobile, the contention is obviously without merit. 1/

Rule I of the N.R.P.C. Rules of Conduct reads:

"Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will.

On the basis of this record, the Carrier's determination that the Claimant violated Rule I is abundantly supported. The claim is 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of September, 1979.

1/
That the Claimant was acquitted in Civil Court is not dispositive of a Carrier disciplinary proceeding. Second Division Award No. 7718 (Lieberman).