

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Laborer Maurice Smith was unjustly held out of service since July 18, 1977 and later unjustly and arbitrarily dismissed from the Baltimore and Ohio Railroad Company effective September 7, 1977.
2. That accordingly the Baltimore and Ohio Railroad Company be ordered to reinstate Maurice Smith with seniority unimpaired, vacation unimpaired, made whole for all health and welfare, insurance benefits including Railroad Retirement and unemployment insurance, and any other benefits he would have earned had this incident not occurred. In addition we are requesting Maurice Smith be made whole for all lost wages retroactive to July 18, 1977 and 12% interest be paid on all lost monies due to his being unjustly held out of service and later 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 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 was dismissed from the service of the carrier after an investigation wherein it was determined that he was guilty of the theft of material being transported in Interstate Commerce.

At the outset the claimant alleges that he was not afforded a fair and impartial hearing as required by Rule 9. It is claimed that the hearing officer's manner of conducting the hearing showed a lack of impartiality on his part which tainted the hearing. We have reviewed the transcript of the hearing in light of claimant's allegations but are unable to find support for said allegations. The conduct of the hearing was fair and impartial in concurrence with Rule 9.

On the merits the claimant takes the position that the carrier failed to meet its burden of proof. We have reviewed the record against the standard this Board has set for the burden of proof, to wit: that sufficient evidence of probative value be produced to support the charge. The standard is not "beyond a reasonable doubt" as required in criminal cases.

In the instant case the weight of the evidence is against the claimant. Not only is the claimant's explanation for his actions questionable but the testimony of officer Truitt and Mr. Primus give the finding of the hearing officer a solid ground.

That theft is a serious charge for which dismissal is an appropriate penalty is axiomatic. We will deny the claim.

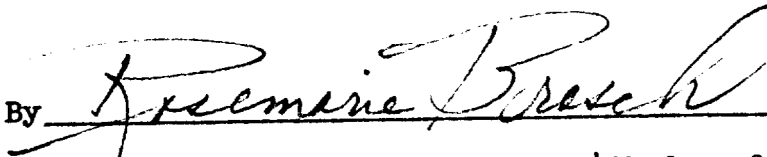
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By



Dated at Chicago, Illinois, this 14th day of November, 1979.

Dated at Chicago, Illinois, this