

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
{ Monongahela Connecting Railroad Company

Dispute: Claim of Employees:

NO.1 That under the controlling Agreement, the Carrier improperly dismissed Carman G. J. Jackson from the service of the Carrier under letter dated August 31, 1977, after investigation held on August 26, 1977.

NO.2 That accordingly, the Carrier be ordered to restore Carman G. J. Jackson to service with vacation and seniority rights unimpaired and be made whole for all losses including compensation for all time arising out of this dispute.

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.

This case concerns the discharge of employee G. J. Jackson by the Carrier on August 31, 1977. The basis for the discharge was the finding by the Carrier that Jackson had been caught in the act of stealing property from one of its customers, the Jones & Laughlin Steel Company, on August 13, 1977.

The employee contends that the hearing held on August 26, 1977, into the events of August 13, 1977, was not proper. He contends that the fact that both of the guards of Jones & Laughlin Steel Company, who testified against him, were present in the hearing room, and heard each other's testimony, rendered the hearing unfair. Further, he contends that there was a case of mistaken identity because he was not at the Jones & Laughlin properties on August 13, but rather was at his home. Finally, Jackson argues that the lack of any civil action against him shows that he was not guilty.

At the hearing of August 13, 1977, two guards from Jones & Laughlin Steel Company testified concerning the attempted theft of properties from that Company's facilities. Both guards specifically identified Jackson as the person who was driving a truck containing a considerable amount of pig iron and electrical equipment.

One of the witnesses testified that he recognized Jackson from his prior employment by the Carrier on the properties of Jones & Laughlin. He further testified that Jackson greeted him when they first met on August 13 and conversed with him in a friendly fashion. The other witness testified that he saw Jackson's name and Carrier identification in his wallet and noted the name and number in his report.

Both of the guard witnesses testified that Jackson and his associate voluntarily returned the pig iron and other material to the properties of Jones & Laughlin. They testified that Jackson failed to deny that the items were the property of Jones & Laughlin, but only explained that he found them on the street.

The testimony set out above clearly presents a valid cause for discharge by the Carrier under the provisions of General Rule S. That rule provides that a cause for discharge is the theft of material from either the Carrier or a customer of the Carrier. This is a reasonable and typical rule which has served as a basis for discharge in many cases.

Further, the fact that credible testimony was presented at the hearing requires that the Board sustain the discharge of the employer. This Board has held in many cases that the resolution of credibility issues are not within the scope of its authority. Rather, the criteria is whether the employer had sufficient evidence of a substantial nature, which would justify the discharge of the employee. The evidence set out above clearly amounts to substantial evidence which justifies the discharge of the Claimant.

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 19th day of December 1979.