

The Second Division consisted of the regular members and in addition Referee Clarence H. Herrington when award was rendered.

Parties to Dispute: { Brotherhood of Railway Carmen of the United States
and Canada
{ The Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That the Belt Railway Company of Chicago as a result of an investigation held on Friday, August 24, 1979 and concluded on Thursday, August 30, 1979, dismissed Carmen L. Sprenkel, W. Byrnes and M. Kidders from their service, effective September 11, 1979. Said dismissal is arbitrary, capricious, unjust, unfair and an abuse of managerial discretion in addition to being in violation of Rule 20 of the current working Agreement.
2. That The Belt Railway Company of Chicago be ordered to reinstate to Carmen L. Sprenkle, W. Byrnes and M. Kidders to their service with seniority, vacation and all other rights and benefits unimpaired and that they be compensated for all time lost from August 16, 1979 up to the date said reinstatement is placed into effect.
3. That The Belt Railway Company of Chicago be ordered to pay Carmen L. Sprenkle, W. Byrnes and M. Kidders any and all dental, hospital, surgical and medical benefit losses suffered account of lost coverage under the Agreements pertaining to Dental, Hospital, Surgical and Medical Insurance Plans for all time held out of service.
4. That The Belt Railway Company of Chicago be ordered to pay the premiums on the Group Life Insurance Plan for Carmen L. Sprenkle, W. Byrnes and M. Kidders for all time that they are held out of service. In addition to the money amounts claimed herein, The Belt Railway Company of Chicago shall pay an additional amount of 6% per annum, compounded annually on the anniversary date of claim to the three (3) named Carmen.

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.

Three Claimants were charged with attempted theft of twenty cases of Sockeye Salmon and one case of Heinz Tomato Catsup from box car MP 782074 located in Carrier's East Receiving Yard. Claimants were found guilty as charged following formal investigation held on August 24 and 30, 1979. Claimants were notified of same and dismissed from service of the Carrier in a letter dated September 11, 1979.

The Board has thoroughly scrutinized the entire record of this dispute, including the transcript of the formal investigation consisting of 138 pages.

At the outset, the Organization maintained that the three Claimants were not properly notified as to the "precise charge" as required by Rule 20 of the current working Agreement. The relevant part of Rule 20 reads:

"No employee shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and his duly authorized representative will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The pertinent portion of Carrier's notice to Claimants, dated August 7, 1979, advising them to report for a formal investigation on Friday, August 24, 1979, read as follows:

"You are hereby notified that you are being withheld from this Carrier's service pending investigation to be held in the Superintendent, Car Department's Office, located at 6900 South Central Avenue, on Friday, August 24, 1979, at 9:30 A.M., for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your unauthorized possession and attempted theft during your tour of duty beginning at 11:00 P.M. on August 16, 1979, of certain merchandise, namely, cases of Sexton Sockeye Salmon as contained in and missing from box car, MP 782074, located on Track #2 in the East Receiving Yard."

The Board finds that the charges cited by Carrier in its notice dated August 17, 1979 were precise and fully met the provisions of Rule 20. Considering the testimony and conduct of the Claimants, as well as their representative, at the hearing, it is clear that they were prepared for the investigation, were aware of the precise incident in question, and were sufficiently notified of the Carrier's charge. The Board hereby holds that the Claimants were clearly advised of the "Precise charge" placed against them and will, therefore, dismiss the procedural issue.

The Board, having dismissed the procedural issue, shall now consider the case on its merits.

The hearing and investigation record in this case support a finding that the Claimants were guilty of the charges filed. The records clearly show that two Belt Railway Police Officers saw the Claimants place the merchandise in the trunk of one of the Claimant's car and positively identified the named Claimants as the three employees who performed the act.

The type of behavior displayed by Claimants in this instance is unacceptable by any standard and is grounds for severe discipline. Carrier need not maintain such individuals in its employ.

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 6th day of January, 1982.