

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist Donald J. Johnson to service and compensate him for all lost pay up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist Donald J. Johnson be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-1 (e) of the prevailing Agreement which was effective April 1, 1976.

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.

An investigation was held on February 28, 1979 to determine whether Claimant, a Machinist assigned to the Collinwood Diesel Terminal at Cleveland, Ohio was guilty of the following charges:

- "1) Conduct unbecoming an employee of Conrail for grand theft.
- 2) Felonious assault on some of our police officers at Rockport Yard on July 14, 1978."

Based on the investigative record, Carrier concluded that he was guilty of the cited offenses and dismissed him from service, effective March 9, 1979. This disposition was appealed.

In defense of his position, Claimant raises several objections, which he contends affected the integrity of the investigative trial. Specifically, he argues that Carrier's disciplinary action subjected him to double jeopardy since

he was found guilty of the same charges in criminal court and that he was not provided with specific charges when he was notified to appear for investigation. Moreover, he argues that two of the three officers involved in the July 14, 1978 incident were not present at the investigation for cross examination.

Carrier contends that it was not legally or contractually precluded from conducting an independent disciplinary investigation and that Claimant was fully aware of the proffered charges at this time to prepare a competent defense. It argues that his due process rights were not violated, when two of the three officers involved in the July 14, 1978 incident, were not present at the investigation, since Claimant willingly acknowledged his guilt at this proceeding and did not ask for a trial postponement. It asserts that his participation in the theft of tires from Rockport Yard on July 14, 1978 and his subsequent attempt to escape capture were explicitly verified by Officer Preisol, who testified that Claimant was the driver of the vehicle that attempted to run him over that night and Captain Lucas' testimony that Claimant appeared in criminal court on November 29, 1978 and pleaded guilty to one count of felonious assault and one count of grand theft.

In our review of this case, we concur with Carrier's position. The record shows that Claimant was afforded an investigative trial that comported with the requirements of contracted due process and that he was found guilty of charges by substantial evidence, including his own admission of culpability. On the night of July 14, 1978, Claimant and three accomplices stole 20 tires from rail cars on Carrier's property and attempted to run down Officer Preisol, when he tried to apprehend them. Claimant was not only identified as the driver of the vehicle, but he pleaded guilty in criminal court to one count of felonious assault and one count of grand theft. Surely, this is a telling admission, which foursquarely confirms Carrier's charged specifications and we are constrained by this clear finding to affirm Carrier's penalty determination. Theft is an intolerable offense, which cannot be tolerated in the employment relationship and merits immediate dismissal when it is established by solid probative evidence. 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


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of January, 1982.