

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

Parties to Dispute: { Sheet Metal Workers' International Association
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the provisions of the current agreement, Rule 7 in particular has been violated account Sheet Metal Wks. (Pipefitters) Peter Sorrenti and Kevin Leverich were given formal investigation held on July 10, 1979 and were dismissed from service July 24, 1979.
2. That because of such excessive discipline being rendered, that the Carrier be required to remove the discipline from Sheet Metal Wks. (Pipefitters) Peter Sorrenti and Kevin Leverich record and they be restored to service with all seniority rights, compensated for all time lost and made whole for all fringe benefits while out of service.

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 Claimants, Pipefitters Peter Sorrenti and Kevin Leverich, had entered the service in November of 1974. On March 24, 1979, a Conrail Special Investigator stopped them with a private van while on Conrail's premises. He discovered that the van contained scrap plumbing and pipefitting materials which he had seen the Claimants pick up at the Conrail Pipe Shop. During the investigation that day, both Claimants signed confessions admitting to the thefts of Conrail equipment; resigned from the Carrier's service, and as a result, threatened criminal charges against them were dropped. At different times during the day of the investigation, the Claimant's foreman, as well as one of the Claimant's father, were present. Subsequently, the Claimants asked to have their resignations rescinded which the Carrier did, with the provision that the Claimants were subject to the disciplinary action of dismissal with which this case is dealing.

The Claimants argue that the scrap belonged to Claimant Leverich as a result of some work he had done for the Oyster Bar restaurant and that the Carrier had not proven that the scrap belonged to the Carrier rather than to the Claimant. Moreover, the Claimants feel that they were not involved in an unauthorized use

of the van in that their supervisor had given them permission to use it. Moreover, because of the incident for which they were charged and the subsequent investigation that followed, they could not do the work they were suppose to do during March 24.

The issues of supposedly improper use of the van (it appears as if the Claimant had permission to use it) and the failure to do the assigned work on March 24 (it appears as if they could not, given the investigation that took place during that time) are subordinate to the issue as to whether or not the Claimants were authorized to take scrap plumbing and pipefitting material from the Carrier's pipe shop and whether the scrap belonged to one of the Claimants or the Carrier. Both parties agree that the Claimants were not authorized to leave any scrap at the Pipe Shop or to take any scrap from that shop. Moreover, although usually the burden of proof concerning who owned the scrap material would rest with the Carrier, this is not the case here. In this Carrier's shop they were not authorized to leave any scrap. The assumption, therefore, has to be that the scrap coming from a Carrier shop belonged to the Carrier. The Claimants thus had the burden of proof to show that the scrap was theirs and they could not prove that the scrap belonged to either one of them.

Moreover, the Claimants admitted to the theft and signed a confession. Afterwards, they claimed that they signed the confession under duress because of the pressure on them during the investigation and because of the threat that they would have to face criminal charges. They further claim they were not given access to a telephone to seek help and advice. First, in their confession, they signed a statement saying that they had been given a Miranda warning which includes the declaration that the Claimant could have requested a lawyer to be present. Second, only after the criminal charges were dropped, did they then decide to rescind the resignation and the confession. Third, although the Claimants claim they could not call anyone, they did call their supervisor and the father of one of the Claimants, who was a supervisor for the Carrier and a former Union official, was present. He could have called anyone if his son could not and presumably would have, if his son was being treated improperly. In short, the Claimants had all the protection that the law requires, and they confessed. Either the Claimants lied when they confessed - a confession which includes a declaration that a lie was a misdemeanor; or they lied when they denied their confession. Either act of dishonesty forces this Board not to be able to trust whatever they might say concerning the ownership of the scrap metal - particularly since they were unable to prove that the scrap belonged to one of the Claimants.

Thus, the evidence substantially supports the Carrier's position. Moreover, there is no reason to question the credibility of the Carrier in the case (See, for example, Second Division Awards 7542, 8219, 8217) while there are reasons to question the credibility of the Claimants.

A W A R D

Claim denied.

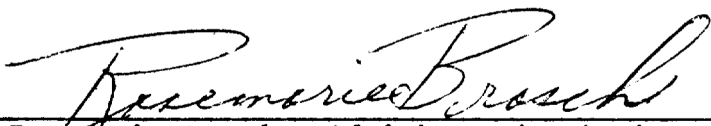
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Award No. 9145
Docket No. 9229
2-CR-SM-'82

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982