

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That in violation of the current agreement Firemen and Oiler Claude D. Cravens, was unjustly dismissed from the service of the Carrier on March 20, 1979, following a hearing held on March 13, 1979.
2. That accordingly, the Carrier be ordered to make the aforementioned Claude D. Cravens, whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits and/or privileges that he is entitled to under rules, agreements, custom or law and compensated for all lost wages. In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim.

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.

C. D. Cravens, Claimant, entered Carrier's service as a laborer on June 17, 1944 and resigned August 25, 1947. On November 27, 1948, he again entered Carrier's service and resigned February 5, 1949. On May 12, 1950, he was rehired.

For approximately a year prior to March 14, 1978, the Federal Bureau of Investigation in conjunction with Carrier's Police Department conducted an investigation into the matter of theft of interstate shipments in Carrier's Roseville, California Yard.

On March 14, 1978, law enforcement officers went to Claimant's residence and, after a consent to search, recovered many and various items of interstate merchandise and Company property. Claimant, a forklift operator, in a voluntary statement, admitted theft of items from boxcars consigned in interstate shipments and Southern Pacific Company property, which were removed during his working hours at One Spot in the Roseville Yard.

On January 3, 1979, Claimant was indicted by the Federal Grand Jury on charge of one (1) count of Violation of Title 18, United States Code, Section 659, "Theft from Interstate Shipment". On January 12, 1979, he appeared in Federal Court and plead not guilty to charge of Theft from Interstate Shipment. On March 9 following, Mr. Cravens was found guilty as charged and was sentenced to imprisonment for one year with sentence suspended during a probationary period of five years. He was also fined \$1,000.00.

During all of this time Claimant continued to work for Carrier. On March 7, 1979, Claimant was cited as follows:

"You are hereby notified to be present at the Office of Terminal Superintendent, 6th and Vernon Streets, Roseville, California, March 13, 1979 at 9:00AM for formal hearing to establish the facts and place responsibility, if any, in connection with your alleged misappropriation of merchandise and/or Company property on or before March 14, 1978 which may be in violation of General Rule 801 of the Southern Pacific Transportation Company reading:

'Employees will not be retained in service who are ... dishonest ... or who conduct themselves in a manner which subject the railroad to criticism. Any act of hostility, misconduct or wilfull disregard or negligence affecting the interest of the Company is sufficient cause for dismissal and must be reported.'

You are entitled to representation in accordance with your agreement and to bring to the hearing such witnesses as you may desire."

The investigation was held as scheduled, and Claimant freely admitted his guilt, however, his union representative objected to the untimeliness of the hearing in view of the requirement of Rule 33 of the applicable schedule which reads in cited part as follows:

DISCIPLINE - SUSPENSION - DISMISSAL

"(a) No employee shall be disciplined or dismissed without a fair hearing by the proper officer of the Company. Suspension in proper cases pending a hearing which shall be prompt, shall not be deemed a violation of this rule."

Carrier explained that its responsible officers did not receive the official report of the joint investigation as it pertained to Claimant until March 6, 1979, whereupon it did act with promptness. The total investigation involved several employees.

We find that under the circumstances Carrier did act with reasonable promptness. Carrier had no duty to hold a hearing exploring Claimant's possible culpability

until the FBI probes and ensuing prosecution were complete. Further, Claimant suffered no harm because of the time factor. To the contrary, he held his job for a year longer than would otherwise have been the case.

We further find no merit to the Union's argument that the notice of investigation was not sufficiently specific.

Claimant's guilt was established in a fair and proper investigation which was free of procedural error. His termination was fully warranted.

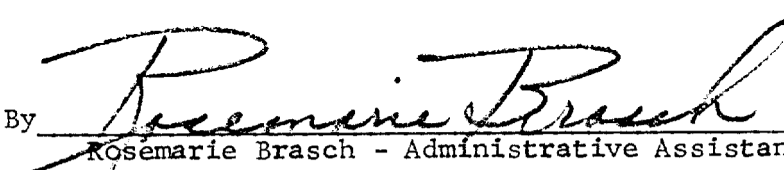
A W A R D

Claim denied.

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 22nd day of July, 1982.