

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers  
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Keith M. Dorsett was unjustly dismissed from service of the Carrier following trial held in absentia.
2. That, accordingly, the Carrier be ordered to make the aforementioned Keith M. Dorsett whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held 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.

Claimant was dismissed from the service of the Carrier following a formal investigation on the charge of theft. Claimant had been accused of unauthorized possession and disposal of brass cylinder rings resulting from an investigation conducted by the Conrail police officers.

Claimant contends that the investigation was unfair and not conducted in an impartial manner in that he was not present, and further contends that the seriousness of the charge did not warrant the discipline of dismissal. Our thorough examination of the record as well as a review of Claimant's prior employment record leads us to hold differently, and uphold the findings of the investigation and the discipline imposed. Specifically, we find that the transcript contains unrefuted evidence that the Claimant was guilty of the charge, that the trial, which was held in absentia, was conducted in a fair and impartial manner, and that the discipline of dismissal was fully commensurate in light of the seriousness of the charge plus the Claimant's relatively short amount of service and poor prior record.

First, we find ample evidence on the record, including plaintiff's own admission to Conrail police officers of his own guilt, which would sustain the finding of guilt in this case. We have consistently held that theft is an extremely serious charge, and when proven and substantiated, warrants the extreme penalty of dismissal. Theft within the railroad industry is a very serious problem and a major offense. There can be no doubt that if Carrier were required to retain dishonest employees in its service, its operations would be seriously affected and that the Carrier must do all that it can to protect itself from employee dishonesty. Employees involving themselves in theft break the bond of trust in the employee/employer relationship. Discharge of such an employee is proper and a warranted response to the finding of theft. This Board is consistently held this position.

Claimant had been employed by the Carrier for approximately five (5) years prior to this incident. He had previously received a five-day suspension and two ten-day suspensions for excessive absenteeism. We find nothing in Claimant's previous work record to alter our opinion that the discipline imposed is fully commensurate with the gravity of the offense involved.

Finally, this Board has previously held, in a number of well-settled cases, that mere abstention from the investigation on the part of the Claimant is not, by itself, enough to warrant a finding that the investigation was not conducted in a fair and impartial manner. Our examination of the record reveals that the hearing itself was conducted in a fair and impartial manner, and Claimant's failure to be in attendance, through no fault of the Carrier, in no way will overturn the findings and discipline previously assessed.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of December, 1982.