

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 Electrical Workers  
( Boston and Maine Corporation

Dispute: Claim of Employees:

1. That under the Current Agreement the Boston and Maine Corporation has unjustly dismissed Lineman R. S. Hazard from service effective January 13, 1981.
2. That accordingly, the Carrier should be ordered to restore Lineman R. S. Hazard to service with seniority unimpaired and to restore to the aforesaid employe all pay due him from the first day he was held out of service, at the applicable Lineman's rate for each day he has been improperly held from service and all benefits due him under the group hospital and life insurance policies for the above mentioned period and all railroad retirement benefits due him including unemployment and sickness benefits due him for the above mentioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally accrue to him had he been working in the above mentioned period, in order to make him whole.
3. That under the Current Agreement, the Boston and Maine Corporation has unjustly dismissed Lineman R. R. Kelly from service effective January 13, 1981.
4. That accordingly, the Carrier should be ordered to restore Lineman R. R. Kelly to service with seniority unimpaired, and to restore to the aforesaid employe all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Lineman's rate for each day he has been improperly held from service; and all benefits due him under the group hospital and life insurance policies for the above mentioned period; and all railroad retirement benefits due him including unemployment and sickness benefits due him for the above mentioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally accrue to him had he been working in the above mentioned period, in order to make him whole.

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 were given due notice of hearing thereon.

Claimants Robert R. Kelley and Richard S. Hazard were dismissed from the service of the Carrier following a formal investigation on the charges of:

1. Unauthorized removal of Carrier's leased vehicle, Truck 912, from the property at North Billerica, Mass., during the evening hours of December 12, 1980.
2. Unauthorized use of Carrier's leased vehicle, Truck 912, on December 12, and December 13, 1980.
3. Unauthorized use of Carrier's material (gasoline), on December 12, and December 13, 1980.
4. Conduct unbecoming to an employee of the Carrier.
5. Bringing discredit upon the Carrier.
6. Use of the Carrier's leased vehicle, Truck 912 in the alleged theft of material from the Consolidated Rail Corp., in Pittsfield, Mass. on the night of December 12, 1980 and the morning of December 13, 1980.

In the appeal before us, Claimants raise a number of issues. We will attempt to deal with each of them. First, Claimants raise the issue that the notice was unfair, that they were not adequately represented, and that regardless, Carrier failed to meet the burden of proof required to substantiate the determination of guilt. We cannot agree with any of these points raised by the Claimants. We find that the notice was proper and that it was specific in its detailing the offenses for which the Claimants were to be charged. We believe that the notice was more than adequate in detailing the charges in order to allow the Claimants to present their defense. Furthermore, we find that record clearly indicates that the Carrier had ample evidence to sustain the findings of fact.

It has long been settled that this Board will not substitute its judgement for that of the hearing officer.

"This Board does not presume to substitute its judgment for that of the Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. A Carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory ... when the degree of discipline is not reasonable related to the seriousness of the proven offense." (Second Division Award 6198)

Furthermore, in addition to finding nothing in the record to support the position of the Claimants, we find that the discipline as determined subsequent to the investigation to be fully warranted. Dishonesty, in any form, has not been tolerated by this Board. The facts, as presented in this case, clearly warrant the assessment of dismissal.

Form 1  
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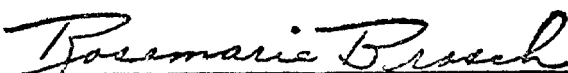
Award No. 9331  
Docket No. 9517  
2-B&M-EW-'82

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 15th day of December, 1982.