

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(
(Indiana Harbor Belt Railroad

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Michael W. Lloyd was unjustly dismissed from service of the Carrier following trial held on May 27, 1980.
2. That, accordingly, the Carrier be ordered to make the aforementioned Michael W. Lloyd 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 employes 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.

Following an investigative hearing, the Claimant was dismissed from service on the following charge:

"Attempted theft at the Gibson Storehouse and leaving your assigned working area without the permission of your immediate supervisor, Mr. E. Krejci, at approximately 5:45 PM on May 13, 1980."

Despite some vigorous questioning by the hearing officer, the Board finds the hearing was conducted in a fair and proper manner.

The Claimant was found away from his assigned work place and in an area where tires are stored. He could provide no reasonable explanation for his presence there, and indeed did change his story as to his supposed purpose in that location.

There can be no doubt that this short service employe (four months) was improperly away from his work area. Suspicion as to his intentions concerning the tires is well founded, but there is no demonstrated proof of actual removal of tires from the Carrier.

In view of this, the Board finds the penalty of dismissal unduly harsh.

A W A R D

Claim sustained to the extent that the Claimant shall be offered reinstatement with seniority but without back pay or retroactive benefits when and if his seniority permits.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.