

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(The Port Authority Trans-Hudson Corporation (PATH))

Dispute: Claim of Employees:

1. That under the current Agreement the Port Authority Trans-Hudson Corporation has unjustly dismissed Machine Repairman William Milner from service effective April 21, 1983, unjustly causing him to be held out of service since April 20, 1983.

2. That accordingly, the Port Authority Trans-Hudson Corporation be ordered to restore Machine Repairman William Milner to service with seniority unimpaired and with 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 Machine Repairman's rate of pay for each day he has been improperly held from service; and will all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned 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 have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

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.

The Claimant, William Milner, a Machine Repairman for the Carrier, in service for 23 years, was dismissed from service as a result of an investigation held on April 20, 1983. The Claimant was charged with the theft of Carrier funds in the amount of at least \$350.00.

The Carrier is a subway operation, operating between New Jersey and New York City. It is a cash operation, therefore, large amounts of money are routinely handled by the Carrier and its Employees.

The record shows that the Claimant was placed under surveillance and on April 20, 1983, detectives in the employe of the Carrier observed the Claimant placing three white-cloth bags into the trunk of his car close to Penn Station in Newark, New Jersey. The Claimant was followed to his place of work in the station and was placed under arrest. After reading the Claimant his rights, he was requested to accompany the detectives back to his vehicle wherein the Claimant signed a consent of search form and his vehicle was searched. Found in the trunk were three bags containing approximately \$350.00 worth of quarters. In addition, \$1,000.00 in bills was found in the Claimant's glove compartment tied with string that is of the type used to secure currency bags for the Carrier.

The Organization argues that the Carrier did not give the Claimant a fair and impartial investigation in that the Conducting Officer failed to have witnesses present who were present at the scene, including the detectives who arrested the Claimant. The Organization notes that perhaps these witnesses would have testified in some way that would have been beneficial to the Claimant. Because of this procedural defect, the Board should not consider the merits of this case.

The Board finds that since the Claimant has admitted that he engaged in theft, witnesses not called by the Carrier nor by the Organization, are not necessary to the investigation. The Board finds that a fair and impartial hearing was held in this matter.

The Organization states that the Carrier has failed to meet its burden of proof and failed to show that the Claimant is guilty exactly as charged. One or more of the following standards were not followed: the Carrier acting in good faith, that it acted unreasonably, or that the discipline was excessive. Many awards before the Second Division and other Divisions of the National Railroad Adjustment Board have stated that proven theft is a reasonable cause for discharge. Certainly substantial proof is necessary in that the Claimant not only would lose his job, but his reputation would be substantially damaged and his ability to find other employment would be severely limited.

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Docket No. 10650
2-PATH-EW-'85

After careful review of the record and the investigation in this case, the Board concludes that the Claimant did engage in the theft of Company property. The Carrier has a right to expect honesty from its employees. The Board finds that this claim should be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August, 1985.