

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

(International Association of Machinists and  
(Aerospace Workers

Parties to Dispute: (  
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad violated the controlling Agreement dated January 1, 1968, particularly Rule 32, but not limited thereto, when it unjustly dismissed Machinist Levone Rivers from service effective April 19, 1983.

2. That accordingly, the Seaboard System Railroad by ordered to reinstate Machinist Levone Rivers with seniority rights unimpaired and reimburse him for all pay and benefits lost (made whole) as a result of the above dismissal.

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 employees involved in this dispute are respectively carrier and employees 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, L. Rivers, a machinist and in service with Carrier since May 13, 1970, was dismissed on April 19, 1983 as a result of an investigation held on March 21, 1983. The Claimant had been on furlough from March 25, 1982 until his dismissal.

On September 2, 1982, the Claimant was arrested for shoplifting at a local K-Mart store. On September 3, 1982, he was arrested again for simple battery at the same location. In State Court, on February 23, 1983, the Claimant pleaded "nolo contendere" and was fined and given probation on each charge. The Claimant was charged by the Carrier with conduct unbecoming an employee, and ultimately, as noted above, was dismissed from the Carrier's employ.

The Organization argued there was no proof that the Claimant was found guilty in the court trial. They noted that he pleaded no contest. In addition, the charges were misdemeanor charges; they should not be treated the same as more serious offenses. They stated the Carrier's Exhibit C, the only newspaper article that mentioned the Carrier by name, was after the dismissal (May 6, 1983). The first article concerning the arrest of the Claimant on misdemeanor charges made no reference to the Carrier and caused it no embarrassment. Finally, the Organization argued that the hearing was not conducted in a fair manner, and there was no method to insure fair treatment of the Claimant. In addition, the Organization noted that there was little chance that the Claimant would have been called back to work in any case.

The Carrier argued that off duty conduct is a concern of the Carrier. Shoplifting and battery are serious charges. The Claimant did plead no contest and was fined and given probation on each charge. The Claimant could pose a threat to employees on the property. The Carrier notes that it would, perhaps, incur liability if any repeat of this activity would occur while the Claimant was on the property.

Upon complete review of the evidence presented, the Board finds that the Carrier conducted a fair and impartial hearing as required under the Labor Agreement. It is always difficult to judge cases that involve off duty conduct. In this case, we have an employee found to have committed two misdemeanor offenses, and we suspect that these were misdemeanor offenses as a result of a plea bargaining situation. These are the type of offenses, theft and assault, which certainly would cause the Carrier substantial concern as to the continued fitness of the Claimant as an employee. There are many cases before this Division and other Divisions which uphold the right under serious circumstances for the Carrier to discipline employees for activities which occurred off property. The Carrier has the responsibility not only to the Claimant but to all of its employees. Because of the type of offenses in this case, the Board will uphold the Carrier's decision in this matter and deny the Claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1985