

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That under the terms of the current controlling Agreement, (hereinafter referred to as Carrier) denied a formal request by Mr. J. D. Fuller (hereinafter referred to as Claimant) who was employed as a Supervisor by the Carrier, to return to the service of the Carrier as a Machinist at the Fort Worth, Texas Locomotive Repair Facility wherein Claimant maintained a seniority date as a Machinist. Request was made on October 28, 1986.

2. Claimant was removed from service for alleged theft of Carrier property while employed as a Supervisor. Claimant's charge letter issued by the Carrier made reference that he would be afforded representation by the IAMAW, according to Rule 24 of the current controlling Agreement. Claimant was removed from service as a Supervisor on October 16, 1986, pending an investigation.

3. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and all service rights unimpaired, with compensation for all wage loss and benefit loss commensurate with date Carrier denied Claimant's formal request to exercise his seniority and be allowed to return to the service of the Carrier as a Machinist.

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.

On October 16, 1986, Claimant while employed in a non-agreement supervisory capacity as a Road Foreman of Engines was summarily dismissed from this position on an allegation that he had misappropriated certain Carrier property. After being removed from this position, Claimant attempted to displace a Foreman, working under the ARASA Agreement, at Carrier's Houston Diesel Servicing Facility. This request was denied.

On November 28, 1986, Claimant requested that he be allowed to exercise his seniority as a Machinist at Carrier's Fort Worth Diesel Repair Facility. This request was also denied and Claimant was advised that he was being withheld from service pending investigation to develop facts and place responsibility on the allegation of misappropriation of Carrier property. Claimant was subsequently given written notice to attend an investigation after which he was dismissed.

The Organization contends that its Agreement was violated when Claimant was denied the opportunity to exercise seniority as a Machinist following his removal from the non-agreement position of Road Foreman of Engines. The Carrier contends that the Claim is both procedurally defective and that it lacks merit because it is not an Agreement violation to hold an employee out of service pending investigation in cases of serious misconduct. Theft is one such instance of serious misconduct warranting being withheld from service.

From our study of this record we are unable to conclude that procedural impediments exist so as to preclude our consideration of this matter on its merits. Accordingly, this contention of the Carrier is rejected.

On the merits of the matter, it appears that the single issue before this Board is whether it was proper, under the Agreement, to withhold Claimant from service, by preventing him from exercising his seniority as a Machinist, pending notice and investigation on a charge that he misappropriated Carrier property while working as a non-agreement supervisor.

We have had the opportunity to consider this very issue in the past. In Fourth Division Award 3652, a Supervisor was relieved from an official position on charges that he removed Carrier material and used personnel without authority. As is the case here this Supervisor attempted to exercise seniority to return to his unit under a Collective Bargaining Agreement. This request was denied. The Board, in Award 3652, concluded that it was not a violation to hold an employee out of service, in these circumstances, when a "major offense" had been committed.

Theft of substantial amounts of Carrier property, by any definition, is a major offense. Thus, we reach the same conclusion as that in Fourth Division Award 3652 - the Agreement was not violated when Claimant was not allowed to exercise his seniority as a Machinist pending the results of the investigation on charges that he misappropriated funds while employed as a non-agreement supervisor. (See also Fourth Division Awards 4003 and 4041.)

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1989.