

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That at the Proctor Car Shop on July 19, 1988, the Duluth Missabe and Iron Range Railway Company violated Rule 2D of the controlling agreement when Superintendent J. J. Uhan suspended Electrician Keith Miernicki prior to an investigation.

2. Under the current Shop Craft Agreement, dated October 1, 1979, Keith Miernicki, Crane Operator, Proctor Car Shop, DM&IR Railway Company, Proctor, Minnesota, was unjustly dismissed on date of August 9, 1988, in violation of Rule 28, as a result of an unfair and partial investigation held on July 27, 1988.

3. That accordingly, Electrician Keith Miernicki be made whole, restored to Carrier service with all seniority rights, vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus 7% annual interest on all such lost wages, also reimbursement for all losses sustained on account of loss of coverage under health and welfare and life insurance agreement during the time held out of service, all commencing on the date of July 19, 1988, and ending on the date the Claimant, Keith Miernicki, is restored to service, both dates inclusive and records show that Mr. Miernicki was on the payroll during this time for accumulation of retirement months, also that the Duluth Missabe and Iron Range Railway Company remove from all it's files and records any allusions or references to the investigation and action.

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 were given due notice of hearing thereon.

On July 18, 1988, Claimant met a fellow employee at his truck during a work break. The Claimant's actions were observed by the Manager of the Proctor Car Shop which led him to investigate the open bed of the Claimant's truck. The Manager found two boxes of nuts and bolts which were investigated thereafter by plant security. The record indicates that Claimant was interviewed and then returned to work completing his shift. Claimant also returned to work the following day and worked without incident.

On July 19, 1988, the Car Superintendent withheld the Claimant, from service under Rule 28 and charged him with the theft of company property. The Organization has argued that the suspension was improper.

After a thorough review of the incident at bar, we find the suspension was not improper. On July 18, 1988, there was reason for suspicion and an indication of a potential threat to the Carrier's property. The Claimant was found to be in possession of new materials in boxes with the initials DM&IR handwritten thereon. The Claimant stated they were his property and had been in his truck for more than a week. However, he was non-responsive and refused to explain where he obtained them. The investigating officer and Manager reviewed the circumstances and returned the Claimant to work. On the following day, the Car Superintendent reviewed the record and not only charged the Claimant, but suspended him from service. The possible theft was a serious offense which, if proven, could result in dismissal. In the circumstances of this instant case, we find merit to the Carrier's position that Claimant's continued presence "after being charged with theft of company property, posed reasonable danger to other company property from further pilferage."

With respect to the procedural issues raised by the Organization, we find no evidence of a Carrier violation of any Agreement Rule. There is no evidence that the Claimant was unaware of the specifics of the charge or unable to prepare his defense. The suspension prior to the Hearing did not prejudice the outcome. The language of the charge and the conduct of the Hearing did not constitute Carrier impropriety. A careful review of procedural issues finds a lack of substantial evidence that Claimant's rights were violated prior to, during, or after the Hearing.

With respect to the testimony and evidence of record we find that it is adequate to support the conclusion that the Claimant had materials in his possession that belonged to the Carrier. After a long and detailed study of this voluminous record we conclude that the nuts and bolts were sufficiently shown to be Carrier materials. We also conclude that the Claimant put the materials into his vehicle. The Manager of the Car Shop was drawn to the truck due to his limited observations. The evidence indicates that the new nuts and bolts which were found in the Claimant's truck were identical to stock items. Other exact bolts were found in an open locker. When asked at the time of discovery where the bolts came from, Claimant responded, "I'm not going to say." During the Investigation, Claimant's witness stated that he gave the boxes to the Claimant. A careful review of all testimony is convincing that the Claimant's explanations and supportive testimony are not

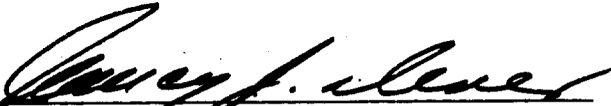
sufficient to overcome Carrier's evidence. This is not simply an issue of credibility wherein the Claimant's witnesses (particularly Mr. Westberg, his long time neighbor) are weighed against the Carrier's. If it were only credibility, this Board would have no authority to resolve the instant Claim as credibility decisions rest with the Carrier. Herein, the Board finds a large body of circumstantial evidence all pointing to Carrier's ownership of materials found in the Claimant's truck. Even without a witness to the removal of the boxes or their placement in the truck, we are convinced that the conclusion of theft is clearly supported. In view of this record and having considered all issues at bar including the procedures, Hearing Officer's conduct, invoice, markings on the box, gloves, testimony, photos and ownership of the bolts, we conclude that the discipline imposed was fully supported. Claimant's dismissal will not be disturbed. The suspicious events suggesting theft were proven.

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 25th day of September 1991.