

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12884
Docket No. 12816
95-2-93-2-181

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "1. Consolidated Rail Corporation arbitrarily and capriciously suspended Machinist W. T. Weyant from service on July 21, 1992 following the completion of a trial. He was reinstated to service on February 2, 1993, but without being made whole for wages and benefits lost.
2. Accordingly, Consolidated Rail Corporation should compensate Machinist W. T. Weyant all wages, including overtime, and benefits he would have received had he not been unjustly dismissed from service on July 21, 1992 and continuing until he was reinstated on February 2, 1993, and expunge from his personal record any and all reference to the charges, investigation, etc. pertaining to the instant dispute.
3. The Carrier violated the Agreement between the parties when it discharged Machinist W. T. Weyant from service effective July 21, 1992, without due process, in an arbitrary and capricious manner, and on a charge unproven. As a result, the rules of the Agreement were violated and particularly RULE NO. 4 -- DISCIPLINE. Additionally, the Carrier committed several procedural errors (a) by failing to appraise Claimant of the precise charge in their Notice of Trial: (b) by failing to have pertinent witnesses present at the investigation: and (c) by not having an impartial Conducting Officer handle the trial."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within in the meaning of the Railway Labor Act as approved June 21, 1934.

The division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The charge was theft. The discipline was dismissal which subsequently, in on-property handling, was reduced to a seven month suspension.

Claimant admitted to Carrier witnesses (who testified at the Investigation) that he had taken a certain article of Company Material from the Carrier and had accepted, from another party, a can of spray paint that he knew came from the Carrier.

The Claimant, during the Investigation, denied he made such a statement. In this appellate forum, we do not judge the credibility of witnesses. That judgement is better left with those in attendance who could witness their decorum, their poise, etc.

The Organization raised several arguments on the property in an effort to derail the discipline but each such argument was adequately neutralized by the Carrier.

Based solely upon the material attached to and the evidence adduced at the Investigation, Carrier's actions in this dispute cannot be faulted. The discipline stands.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of May 1995.