

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13654

Docket No. 13533

01-2-00-2-12

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“That the Union Pacific Railroad Company (hereinafter referred to as Carrier or Company) violated Rule 32 of the Current Controlling Agreement dated June 1, 1960, as subsequently amended, between the International Association of Machinists and the Missouri Pacific Railroad Company, when it unjustly dismissed Machinist Robert Johnson, Jr. (hereinafter referred to as claimant) from the service of the Carrier.

Accordingly, we request that the Carrier reinstate the Claimant, compensate him for all lost time and give him credit for all benefits lost as a result of his unjust 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 employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant was subject to an investigative Hearing under which he was alleged to have violated Rules 1.6 and 1.15 of the Carrier's Safety and General Rules. The Notice of Hearing stated as follows:

"It is alleged that during the dates of May 27, 1999 through May 31, 1999 you removed company property without permission and used the property for your own personal use.

It is also alleged that during the dates of May 27, 1999 through May 31, 1999 you were absent from your work assignment without permission several times. It is also alleged that on May 28, 1999 you left your work assignment and company property at 10:38 P.M. without permission and had another employee clock you out at 11:00 P.M. which is the time you were scheduled to complete your work assignment.

It is also alleged that again on May 30, 1999 you left your work assignment and company property at 10:33 P.M. without permission and had another employee clock you out at 11:00 P.M. which is the time you were scheduled to complete your work assignment."

Following the Hearing, the Claimant was dismissed from service.

The Board finds without convincing significance the Organization's procedural objections. The Organization contends that the Notice of Hearing was not sufficiently "precise" to meet the standard required by Rule 32. The Board finds to the contrary, in that the Claimant and his representative were fully apprised of the nature of the charges (alleged removal of Carrier property and alleged false time reporting) and the dates encompassed therein. The Organization was able to provide a full defense for the Claimant.

The Organization objected to an extended delay in being provided with the video tape shown at the Hearing. While a more prompt delivery of the tape would have been preferable, it was demonstrated at the Hearing that the information provided by the tape was of little or no significance (as argued by the Organization). Its purpose was to confirm that observations by a Carrier Special Agent had been made.

The Organization correctly objected at the Hearing to a leading question addressed to a Carrier witness by the Hearing Officer. Further, in response to an objection, the Hearing Officer made a premature response as to what the video tape actually demonstrated. There is no basis to assume, however, that these incidents denied the Claimant a fair Hearing and a reasoned decision by the Carrier as to the Claimant's actions.

Prior to the Hearing and based on the Special Agent's extended observation, the Claimant was subject to an interview by the Special Agent, at the outset of which the Claimant was notified of his rights, including that of not participating. Following the interview, the Claimant provided a statement admitting to taking "during the last two weeks . . . about 6 bundles of hand towels . . . from the Supply Department." Further, he admitted to leaving his assignment early on two dates and stating another employee "clocked me out" at the end of the assigned work time.

Nothing in the Hearing demonstrated that these admissions were not factual or that the Claimant had made the statement under duress.

The offenses were admitted. They are of a nature warranting the dismissal action taken by the Carrier.

AWARD

Claim denied.

ORDER

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 11th day of December, 2001.