

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13656

Docket No. 13543

01-2-00-2-20

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 (without due notice) Machinist J. W. Harrison (hereinafter referred to as claimant) from the service of the Carrier simply because he was arrested at work for some type of alleged wrong doing.

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.

While on duty on October 8, 1999, the Claimant was arrested by local police concerning matters unrelated to his work. The Carrier withheld the Claimant from service, pending the outcome of an Investigative Hearing. An article in the local newspaper reported that the Claimant was arrested "while he was working at his job on the Union Pacific railroad tracks in North Little Rock."

The Claimant was subject to an Investigative Hearing to:

"... develop the facts and place your responsibility, if any, in connection with the charge that you were arrested at work on October 8, 1999 for charges that are allegedly not consistent with the behavioral conduct of an employee of the Union Pacific railroad.

These allegations, if substantiated, shall constitute violation of Company Rule 1.6 and 1.9 and as such, shall result in the assessment of Upgrade Level 5 Discipline."

Following the Hearing, the Claimant was dismissed from service.

The Organization raises a number of procedural matters which the Board finds to be without substance. One in particular deserves review. The Organization contends that the Claimant was "disciplined" prior to being afforded an Investigative Hearing. This is simply incorrect, in that Rule 32 permits an employee, "in proper cases," to be withheld from service pending a Hearing.

The Organization also argued that the charge against the Claimant was "vague, ambiguous and lacks specificity" and does not indicate the relationship of the charge to the provisions of the cited Rules. The Board finds that the charge was clear as to identifying the incident and was sufficiently precise to permit the Organization and the Claimant to provide a full defense.

As to the merits, the Organization principal argument is that there is no proper basis for discipline when an employee is "arrested" by civil authority, since there is no certain indication as to the criminal charges, if any, and there has been no finding of guilt.

Here, however, the Carrier argues that information provided by the Maintenance Manager; the nature of the alleged crime, as shown on a police report; and a contemporaneous newspaper article are sufficient to make a disciplinary judgment even absent the results of any court action following the arrest. This information is as follows:

First, the Arrest Disposition Report identifies charges for which the arrest was made as “arson” and “theft of property.”

Second, the Maintenance Manager testified at the Investigative Hearing that he was in the Carrier’s guard shack when police officers were interrogating the Claimant. The Maintenance Manager stated:

“[The] police officers . . . specifically questioned him [the Claimant] about an insurance case involving a, I believe it was a pickup, and whether that pickup had been stolen and burnt.

In the course of their interrogation, [the Claimant] readily admitted that he was guilty of those charges as the questions came out.”

Third, the newspaper article, which identified the Claimant by address, stated as follows:

“Police arrested a man Friday who they said had hoped to bilk an insurance company by setting fire to his truck.

A police report said [the Claimant] confessed to taking several parts from the truck and setting it on fire Sept. 23.”

At the Investigative Hearing, the Claimant denied he had made any confession of guilt; denied setting a truck on fire; and denied making a report about a stolen truck.

The Carrier relied on its belief in the credibility of its Maintenance Manager, who stated he heard the Claimant admit to actions about which he was being interrogated. The Carrier also relied on the newspaper report, which, as pointed out by the Organization, did include inaccuracies. On the other hand, the article cited a police report of confession by the Claimant.

Where there is no knowledge of the cause for arrest and no determination of subsequent court action, disciplinary action is usually premature and occasionally without support (for example, if charges are dropped or the employee is found innocent). As discussed above, however, the Carrier had ample basis here to believe the Claimant had confessed. The Board has no reason to question this conclusion and agrees that such alleged criminal action and its accompanying publicity make the Claimant unsuitable for continued employment with 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.