

Award No. 2484
Docket No. 2301
2-MP-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2 RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the service rights and the employment relations of Locomotive Carpenter William V. Bickel, were unjustly terminated effective as of 8:00 A.M. on October 10th, 1955.

2. That the Carrier be ordered to reinstate this employe to all service rights retroactive to the aforesaid date and that he be paid for all time lost.

EMPLOYEES' STATEMENT OF FACTS: At Kansas City, Missouri the Missouri Pacific Railroad, hereinafter referred to as the carrier, maintains a large diesel shop where approximately 350 carmen are employed. Mr. William V. Bickel, hereinafter referred to as the claimant, is employed in this diesel shop as a locomotive carpenter on the third trick, hours 12 Mid-night to 8:00 A.M., and has been in the employ of the carrier for the past thirty-one (31) years with a clean record. The claimant has had no trouble or indulged in any altercation with anyone during this thirty-one years. He has never taken anything from the carrier, nor been so accused of taking anything that did not belong to him prior to the time he received communication from Master Mechanic A. J. Daniel summoning him to report to his office on October 12, 1955, 10:00 A.M. "for investigation to develop and place responsibility in connection with your unauthorized procurement of gasoline", the charges being made as follow:

1) First charge on September 26, 1955 at approximately 3:20 A.M.

2) Second charge on October 8, 1955 at approximately 1:10 A.M.

3) Third charge on October 10, 1955 approximately 1:10 A.M.

"Claimant gave no reasonable explanation of his possession thereof nor did he give any justification for having this stolen property in his possession. In fact, he at first attempted to avoid detection of what he had in the box by falsifying as to its contents. We think the evidence fully supports a finding that claimant was guilty of the charges made against him.

Suggestion is made that dismissal is too severe a penalty and unreasonable under all the circumstances. The charges are of a serious nature and fully established. Carrier should not be required to be burdened with an employee who has such tendencies."

It is conclusive from a review of the foregoing awards, that your Board will not order the reinstatement of an employee found guilty of theft from his employer, recognizing that a "Carrier should not be required to be burdened with an employee who has such tendencies."

We believe it is clear from the record in this case that Claimant Bickel was accorded a fair hearing within the meaning of that term as understood throughout the railroad industry; that there was abundant substantial proof of a most positive nature of the claimant's guilt, and that all Divisions of the National Railroad Adjustment Board have uniformly held that theft by an employee from his employer is a very serious offense and one which warrants outright discharge.

For these reasons, the request of the organization should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

The claimant, who had been employed by the carrier about thirty-one (31) years, was dismissed from the service of the carrier on October 10, 1955 with the reason given; unauthorized procurement of gasoline. A hearing was had on carrier's property on October 17, 1955, attended by the claimant, his representative and witnesses. The claimant denies taking the gasoline.

Evidence adduced at the hearing discloses that carrier had reason to believe someone was taking gasoline from its pump without permission. The gasoline pump was placed under surveillance. The shop watchman testified that he saw the claimant take gasoline from the pump about 3:00 a.m., September 26, 1955. Two special officers were thereafter assigned to watch the pump, and testified that at about 1:00 a.m., October 8, 1955 they saw the claimant take gasoline from the pump. They also testified that at about 12:15 a.m., October 10, 1955 they saw claimant fill two (2) five (5) gallon cans at the pump and place the cans in the trunk compartment of his car. They also testified that the claimant was apprehended within a few minutes thereafter with the cans full of gasoline in the back of his car. The claimant's foreman testified that the claimant was not authorized to take gasoline from the pump.

The claimant denies ever taking gasoline from the pump. He does admit going to move his car from a dark to a lighted area on the parking lot at about the same time each of the incidents occurred that were referred to by the guards. He claims the cans were not in his car but on the ground when he was taken into custody by the two special officers. He testified someone else placed the cans there. We do not credit his testimony.

We find that the claimant did, without permission, expressed or implied, take gasoline presumably for his own use from the carrier's pump on September 26, 1955, October 8, 1955 and October 10, 1955. We also find that the claimant was afforded a fair investigation on the property and that credible evidence presented at the hearing fully supports the charges against him. We also find he was dismissed for just cause.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.