

Award No. 3537
Docket No. 3406
2-C&NW-MA-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago and North Western Railway Company unjustly dismissed Machinist E. M. Orr from its service on December 10, 1957.
2. That accordingly the Chicago & North Western Railway Company be ordered to reinstate this employe with all service rights with compensation for his total wage loss retroactive to November 8, 1957.

EMPLOYEES' STATEMENT OF FACTS: The Chicago and North Western Railway, hereinafter referred to as the carrier, employed E. M. Orr, hereinafter referred to as the claimant, on December 3, 1919, at its Norfolk, Nebraska shop, and he was laid off in 1926. The carrier again rehired the claimant as a machinist on January 6, 1942 and he worked until November 8, 1957, when he was held out of service pending an investigation and was officially dismissed from service December 10, 1957.

Acting on information received from a person not employed by the carrier to the effect that the claimant had removed certain material from the carrier's property for private use, the claimant was held out of service upon completion of his regular tour of duty on November 7, 1957, after giving a statement to Special Agent Staples as to the material removed.

The investigation was held on November 20, 1957 in the office of Superintendent E. E. Coover at Norfolk, Nebr.

On November 21, 1957, Special Agent Staples contacted the claimant and suggested to him that if payment in the sum of \$100.00 were to be made it would go a long way in assuring Mr. Orr in keeping his job. The claimant presented a check to Mr. Staples for the sum of \$100.00 made out to E. O. Linstead, Treas. C&NW RR. This check was deposited in the Continental Illinois National Bank and credited to the account of C&NW Ry. on December 3, 1957.

On December 10, 1957, the claimant was officially notified by the master mechanic that he was being dismissed from the service of the carrier.

set aside Mr. Orr's previous admissions or those admissions made by him during the investigation.

There is no question in this case but that it was definitely established both prior to and at the investigation of November 20, 1957, that Claimant Orr did in fact remove certain railway company property for personal use. The established policy of this carrier, which is completely understood and recognized by its employes and the representatives of its employes, is that employes will not be retained in the service nor returned to the service under any circumstances, who steal or appropriate company property for their own purposes. While the actual value of the property "appropriated" by Mr. Orr may not have been great and has not in fact actually been determined, the carrier's policy against retaining such employes in the service is not dependent on the actual value of the stolen or appropriated items. The carrier believes it is fully justified, once the stealing or appropriating of company property is proven, as was done in this case, of permanently severing the employment relationship of the employe involved. The carrier submits that in view of the fact that this is definitely established, its action in dismissing Mr. Orr was clearly justified.

The carrier submits that this claim should be denied in its entirety.

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 employe 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.

A careful study of the transcript of the investigation is convincing that there was ample substantial evidence to support the charge and dismissal of claimant from service, even independent of his own signed admission.

The payment made to the Special Agent subsequent to the investigation was either in contradiction of his denial of the charge at the investigation or an attempt to purchase leniency which was not within the control or authority of the Special Agent, perhaps both.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1960.