

Award No. 3590
Docket No. 3153
2-CB&Q-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L.—C.I.O. (Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. At Galesburg, Illinois, the Carrier unjustly dismissed R. J. Little, 723 Car Inspector from service on March 10, 1958.
2. That he be restored to service with seniority rights unimpaired and compensated for all wages lost due to such unjust dismissal.

EMPLOYEES' STATEMENT OF FACTS: The claimant has been an employe of the carrier since September, 1941 and at the time he was dismissed from service he was working an assigned week of Wednesday through Sunday with hours of 8:00 A. M. to 4:00 P. M.

On March 10, general car foreman wrote Mr. Little as follows:

"This is to notify you that you are hereby dismissed from the service of the Chicago, Burlington & Quincy Railroad Company for removing articles from C.B.&Q. property at Galesburg, Illinois and having certain articles bearing C.B.&Q. R.R. identification marks in your possession at your home."

An investigation was requested in accordance with the agreement. The request was made of the general car foreman, however, general car foreman referred the matter to the district master mechanic who then notified the local chairman that an investigation would be held on March 17 at 9:00 A. M.

The facts developed during the investigation show that the articles found in possession of the claimant at his home bearing C.B.&Q. markings were a hammer, chisel and two old lights and that nothing had been removed from the C.B.&Q. property by the claimant without the knowledge and consent of the local officials of the carrier.

This dispute was handled with carrier officials designated to handle such matters who all declined to adjust the case.

and energy of this Board in an attempt to secure reinstatement and pay for time lost on behalf of such a former employee.

In its efforts, the organization may choose to argue that the items stolen by claimant were not of material value. This argument has already been answered by the Board in Awards 1850 and 1851, where the same findings were made:

Second Division Awards 1850-1851, Indiv. vs. PRR, Referee Bailer

"Nor can we accept the doctrine, which claimant appears to advance, that the penalty should be reduced because the items were not of substantial value. Carrier is entitled to expect its employees will remain honest in all matters of this kind, not solely where substantial value is involved."

Moreover, in such cases, the items found in claimant's possession usually represent only a small portion of the property he has misappropriated from his employer. How much more Mr. Little took home during the course of his employment with the Burlington can only be left to speculation.

The Board is reminded that its function in discipline cases is to interfere with the management's prerogative only where it appears that the carrier has abused its discretion. Certainly the dismissal of a thief cannot be so construed. No employer could be expected to retain a man guilty of these offenses.

In view of the above and foregoing, this claim must be denied.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Claimant was discharged after an investigation for wrongfully removing property from the railroad's premises and for having certain articles in his home bearing the identification marks of the carrier. The employes maintain that the dismissal was unjust for two reasons, viz., that claimant had not actually removed the articles from the premises and that his explanation of how he acquired the property found in his home should have been accepted by the carrier.

The evidence is not in conflict and the basic question presented is whether the carrier's interpretation of it was reasonable or arbitrary. The claimant admitted that he was about to remove the saw and coat hangers from the company's premises when he was interrupted by a special agent. We think admission of an intent to appropriate these articles to his own use, which he would have carried out but for the interference of the special agent, was sufficient to support the charge of wrongful taking.

On the record before us, we are unable to say that the carrier was required to accept claimant's uncorroborated statement that he bought the hammer and chisel at a sale and was given the lanterns and globe by a deceased car foreman. He offered no explanation about the stow gates found in his home. It is undisputed that all of these items had at one time been the property of the railroad company. Unexplained possession of property *prima facie* belonging to another may support a presumption that it has been wrongfully taken. The probable truth of claimant's explanation was for the carrier to determine.

The evidence presented at the investigation and the proper inference to be drawn therefrom do not justify a finding that the carrier acted arbitrarily or capriciously in this instance.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1960.