

Award No. 3834

Docket No. 3770

2-IC-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Doyle when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Machinists)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist R. E. Haley, McComb shop, McComb, Mississippi, was unjustly discharged from service May 7, 1959.

2. In consideration of the foregoing, Machinist R. E. Haley is entitled to be reinstated to service with seniority rights unimpaired and compensated for any wage loss subsequent to May 9th, 1959.

EMPLOYEES' STATEMENT OF FACTS: Machinist R. E. Haley, herein-after referred to as the claimant, has had many years of service with the Illinois Central Railroad—dating back to May 11, 1921—and completed his apprenticeship on July 1, 1925 with his employment thereafter somewhat intermittent. On April 27, 1959, he was notified to appear in office of master mechanic for formal investigation to determine his responsibility, if any, for alleged misappropriation of Company material. Formal investigation was held on May 1st, 1959, and on May 7, 1959, he was discharged from service of the carrier. The agreement effective April 1, 1935, as subsequently amended is controlling.

POSITION OF EMPLOYEES: The evidence of record clearly indicates that no proof has been adduced to support the charges that claimant misappropriated Company material.

Therefore, in accordance with Rule No. 39 reading in part, ". . . If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from such suspension or dismissal."

Based on the evidence the claimant was unjustly removed from service and we request your Honorable Board to so find.

CARRIER'S STATEMENT OF FACTS: On April 24, 1959, carrier's Assistant Special Agent L. C. Williams advised Master Mechanic B. D. Venable,

5. There is no reasonable basis for the Board to disturb or set aside the discipline assessed in this case.

The carrier, therefore, requests the Board to deny this claim in keeping with its long line of unequivocal decisions on similar cases.

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.

The hearing in this case was somewhat summary in nature but in view of failure of claimant to appear in person there can be no valid objection to it. An exhibit in the record shows that in failing to appear, claimant acted on advice of counsel.

The evidence discloses that on April 14th and 18th, 1959 a quantity of copper and brass scrap was sold by Haley to a scrap iron and metal company at McComb, Mississippi. Haley was positively identified as the seller and after the investigation commenced Haley made an effort to obtain the documentary evidence of the sale from Traver, the scrap dealer. In fact, he talked threateningly after attempts to purchase the documents had failed.

The contention of claimant requiring some comment is that the evidence in the record is insufficient to establish that the scrap iron which was sold belonged to the carrier, or stated differently, that the *corpus delicti* of the offense was not shown. It is, of course, axiomatic that in this type of proceeding proof beyond a reasonable doubt is not essential. Nevertheless some comments are in order as to the adequacy of this evidence.

Opinion evidence that it was Illinois Central property is necessarily inconclusive. Here, however, there was no other logical source. Haley's actions in seeking to cover up the transaction furnish strong circumstances that it was Carrier property. His unexplained statement that it could not be proved to be property of the railroad is also persuasive. These circumstances plus the circumstances surrounding the sales are sufficient to establish the questioned element.

Finally, the principle that unexplained recent possession of stolen property creates an inference that the person in possession stole the property is fully applicable.

Being of the opinion that the evidence is legally sufficient we conclude that the claim be and it is hereby denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1961.