

Award No. 4199
Docket No. 3964
2-CRI&P-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement Carman W. L. Trieb was unjustly dismissed from the service on November 11, 1960.

2. That accordingly, the Carrier be ordered to restore Carman Trieb to service with all seniority and service rights unimpaired and compensate him for all time lost retroactive to November 11, 1960.

EMPLOYES' STATEMENT OF FACTS: Carman W. L. Trieb, hereinafter referred to as the claimant, entered the service of the Chicago, Rock Island & Pacific Railroad Company, hereinafter referred to as the carrier, on March 4, 1946, at Armourdale, Kansas.

On October 28, 1960, in the course of his regular duties it was necessary for the claimant to make repairs, consisting of changing brake shoe keys, to five (5) cars.

On October 31, 1960 the claimant received notice to appear for an investigation reading:

"You are hereby notified that an investigation will be held at Armourdale, Kansas in old Master Mechanics office, Thursday Nov. 3rd, at 9:30 A. M., to develop the facts and discover the cause and determine your responsibility, if any, in falsifying repairs made to cars ACL-24237, WAB-6676, CBQ-35048, GN-19965 and MILW-705875 on date of October 28th, 1960 in Armourdale yard at 7th Street in vicinity of Rock Island Elevator and in violation of Association of American Railroads code of Interchange Rules. Also violation of Gen Notice G-147 Revised.

All the keys have been retained by the carrier in the state they were found when offered in evidence at the investigation. Upon request of the Board we shall be pleased to make them available for the Board's inspection.

Mr. Trieb's story at the investigation was that rather than using new keys or authorized second-hand replacement keys described above, he used keys "... that I found lying on ties right east of the Elevator." Even if this story of Mr. Trieb's were to be believed, the charges in the case that Mr. Trieb falsely reported making repairs to the five cars would be proven.

Obviously a qualified car inspector does not pick up brake shoe keys lying alongside a track, install them in foreign line cars and bill them as repairs made to foreign line cars. Such a practice is prohibited and Mr. Trieb knew it.

The seriousness of the falsification of the repair report is compounded by the seriousness of Claimant Trieb's attempt in the investigation to pass off the falsification as a minor error, or to depend on a speculation that outside elements might have prevented four experienced mechanical department supervisors from making an accurate inspection on all brake shoe keys on all five cars in question. Obviously the organization attempts to becloud the issue by pleading that Mr. Trieb merely made an error and should not have been called to explain his mistakes in a formal investigation under Rule 34.

As the transcript shows the falsification of reports of repairs to foreign line cars and improper billing of repairs is an extremely serious matter. Falsification of repair reports could, under A.A.R. Interchange Rule 124, subject this carrier to a penalty of having to perform all repair to foreign cars free of charge for an entire year if detected, dependent upon decision by the A.A.R. mechanical section based on individual cases.

As serious as this matter is, it becomes readily apparent that falsification of reports of repairs to foreign equipment under A.A.R. Interchange Rules cannot be tolerated. It should not be necessary — nor can this carrier afford — to have supervisory personnel accompany carmen making such repairs at all times to assure honest performance of duty. Carmen occupy a position of trust. They are expected to perform their work with the utmost honesty. When that trust is violated, when that honesty is breached, then the employe should be dismissed from the carrier's service.

Because Claimant Trieb was afforded a fair and impartial investigation, and because the evidence developed at the investigation and recorded in the transcript is conclusive that claimant Trieb falsely reported he made repairs to five foreign line cars when actually none were made, and because the offense is of a serious nature, involving this carrier, safety to employes and the public, and the relationship with other carriers through the interchange of cars and equipment under rules laid down by the Association of American Railroads, the dismissal of claimant Trieb should not be set aside. The carrier so urges.

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 waived right of appearance at hearing thereon.

The Claimant W. L. Trieb was employed as a car inspector at the Carrier's Armourdale Yard, Kansas City, Kansas. At the end of his shift on October 28, 1960, he submitted billing repair cards claiming that he had installed one new brake shoe key on each of five foreign line cars. Upon checking these cards the next morning (October 29, 1960), General Car Foreman C. T. Tyree decided to check whether the Claimant had made the repairs reported by him. He inspected the cars in question and found that no new brake shoe keys had been installed. At about 11:00 A. M., he made another inspection at which he was accompanied by Car Foreman H. G. Eberhardt. The latter inspected each car and found that none of the brake shoe keys had been removed or replaced lately. At about 12:30 P. M., Tyree made a third inspection together with General Locomotive Foreman J. T. Baier. The latter inspected every brake shoe key on each of the five cars and found that no key had been applied recently. At about 2:30 P. M., a fourth inspection was made by Tyree and Car Foreman Wm. Laswell. The latter inspected the five cars and found no new brake shoe keys on any of the five cars. He also found that no key on any of the cars had been moved from its original position.

The Carrier charged the Claimant with having falsified the repairs allegedly made on the five cars in question. After a formal investigation hearing, the Claimant was dismissed from the Carrier's service, effective as of November 11, 1960. He filed the instant grievance in which he requested reinstatement with all rights unimpaired and with compensation for all time lost. The Carrier denied the grievance.

1. At the close of the investigation hearing, the Claimant acknowledged that the hearing was fair (Organization's Exhibit "A", p. 15). However, his representative, Local Chairman B. Saunders, objected that the Claimant was not given a chance properly to prepare his defense and that the hearing was not fair and impartial (*ibid.*, pp. 15, 16).

In regard to the first objection, the record shows that the Carrier served a written notice, dated October 31, 1960, upon the Claimant containing a precise charge, the provisions allegedly violated by the Claimant, and the place, date, and hour of the investigation hearing. The Claimant was also advised in said notice that he was entitled to have a representative and witnesses present at the hearing (*ibid.*, p. 1). There is no indication in the record that the Claimant or his representative requested a postponement of the hearing for the purpose of preparing his defense. Accordingly, the procedural objection is without merit.

As far as the second objection is concerned, a careful examination of the stenographic transcript of the investigation hearing has satisfied us that the hearing was generally conducted fairly and impartially, except that the hearing officer ruled that any question which the Claimant wanted to ask could only be asked by his representatives (Carrier's Exhibit C-1, p. 7). This ruling was clearly unjustified because the right of an accused personally to ask pertinent questions is beyond challenge. In the instant case, the erroneous ruling of the hearing officer did not, however, unduly infringe upon the Claimant's right to bring to the fore all essential facts. He was ably represented by the Local Chairman and two committee members who were permitted by the hearing officer to ask all relevant questions desired by them. Moreover, the Claimant himself did not consider that the hearing was conducted in an unfair manner. Upon the specific facts of this case, we are of the opinion that the hearing was fair and impartial. Hence, the mis-

take of the hearing officer is immaterial to the disposition of the grievance under consideration.

2. The right of an employer to take disciplinary action against an employe who has materially and substantially falsified work records is too obvious as to require discussion or explanation. See: Awards 3626, 3628, and 3828 of the Second Division; Arbitration Awards in re Phillips Petroleum Co., 25 LA 568 (1955) and Neon Products, Inc., 62-2 Labor Arbitration Awards (Commerce Clearing House, Inc.) No. 8627, p. 5327 (1962).

The pivotal question posed by the grievance at hand is then whether the Claimant did not install any brake shoe keys as charged by the Carrier. The evidence on the record considered as a whole amply sustains the charge. General Car Foreman Tyree (40 years of service), General Locomotive Foreman Baier (19 years of service), Car Foreman Eberhardt (38 years of service), and Car Foreman Laswell (15 years of service) testified that they carefully inspected the five cars on October 29, 1960, and found beyond a doubt that the Claimant had not installed any brake shoe keys on any of the five cars in question on the preceding day as reported by him in the billing repair cards. There is nothing in the record which would adequately contradict the testimony of these experienced supervisors, except the Claimant's self-serving denial. In an effort to exonerate himself, the Claimant contends that he installed second hand keys on the cars and that he reported the installation of "new" keys by mistake. This contention has left us unconvinced in the face of the positive and persuasive testimony of the above mentioned witnesses that none of the keys on the five cars had been removed or replaced at the time here relevant.

In summary, we hold that the billing repair cards submitted by the Claimant on October 28, 1960, contained a material and deliberate misrepresentation. They did not merely contain a minor and excusable error.

3. We have consistently held that a disciplinary penalty imposed by a Carrier upon an employe can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, excessive or an abuse of managerial discretion. See: Awards 3874, 4000, 4098, and 4132 of the Second Division. The available evidence does not disclose that the Claimant's dismissal was based upon such unreasonable grounds. He committed a serious offense for which we fail to see any mitigating circumstances. He was discharged for just cause within the contemplation of Rule 34 of the applicable labor agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1963.