

Award No. 4401
Docket No. 4240
2-SAL-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable agreement Carman W. A. Hough, Jr. was unjustly charged in an investigation, conducted in the Assistant Superintendent's office Charleston, South Carolina, April 19, 1961 and discharged from the service on May 1, 1961.

2. That accordingly the Carrier be ordered to reinstate Carman W. A. Hough, Jr. with seniority rights unimpaired and compensate him for all wages lost as the result of said unjust charges and dismissal.

EMPLOYEES' STATEMENT OF FACTS: W. A. Hough, Jr., hereinafter referred to as the claimant has been employed by the Seaboard Air Line Railroad Company, hereinafter referred to as the carrier, for 15 years, assigned as carman, Cooper yard, Charleston, South Carolina. His regular assigned hours are from 3:00 P. M. to 11:00 P. M., work week Monday through Friday, rest days Saturday and Sunday.

He was notified by letter underdate April 14, 1961 from Mr. L. B. Alexander, master mechanic, to appear for formal investigation to be held in the office of assistant superintendent, Charleston, South Carolina, Wednesday, April 19, 1961 at 10:00 A. M. to develop the facts and determine his responsibility in connection with improper removal and disposition of scrap brass from company property at Charleston, on April 7, 1961.

On April 19, 1961 claimant was given an investigation.

On May 1, 1961 the claimant received notice of his dismissal from service.

It is pointed out that the claimant was available, able and willing to be restored to service since May 1, 1961 and this dispute has been handled in accordance with the provisions of the agreement, effective September 1, 1949, as subsequently amended, with the proper officers of the carrier, including the

As held in Second Division Award 1831: "This of course is not so. The decision must result from a consideration of all the evidence, including the circumstances. In this case it supports the carrier's position."

As held in Second Division Award 1851, it strains one's credulity to accept the doctrine advanced by the claimant and the general chairman that claimant did nothing wrong. It is pertinent to cite the holding in Second Division Award 2098, that:

"The facts of record indicate that the carrier did not act capriciously, arbitrarily, nor in bad faith when it concluded that the claimant was guilty as charged. The record of the investigation contains testimony which justified the carrier in its conclusion.

Considering the gravity of the offense we are of the opinion that modification of the amount of discipline would not be proper in this case."

As held in Second Division Award 1776: "The charges are of a serious nature and fully established. Carrier should not be required to be burdened with an employe who has such tendencies."

There is no basis for sustaining the claim and reinstating the claimant and the claim 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 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.

It was not disputed by the claimant, or his foreman, that their removal of the scrap brass from Carrier's property and its subsequent sale for \$38.50, was improper and beyond the regular duties of a carman. The chief defense offered by claimant was to the effect that he was merely obeying the instructions and/or request of his immediate superior who asked him to take the scrap brass to a nearby salvage yard, sell it and return the entire proceeds to him. Claimant further states that he and his foreman did not discuss the possibility of his receiving additional compensation for selling the scrap brass and he admits that the sale took place on company time. Carman W. A. Hough, Jr. cites as his reason for explicitly following his foreman's instructions and/or request, the fear that employes have of being "rawhided or discriminated against" unless they do everything asked of them by their supervisors.

The facts before this division do not justify the expressed fear of Carman Hough. On the contrary claimant leads us to believe that he and his foreman were good friends. The foreman is described by claimant Hough as being easy to get along with and that he never got hard-boiled and ordered you to do so and so. Moreover claimant admits advancing money to the foreman to be used by him to reimburse the scrap dealer. Such statements and conduct bespeak friendship, not fear, therefore the admission of the wrongdoing, when

examined in the light of the experience of Carman Hough, leads us to the conclusion that no adequate defense exists to the charges that claimant improperly removed and disposed of scrap brass from carrier's property.

Award 4282 and many others, state that this division is without power to substitute its judgment for that of the carrier unless the action taken was arbitrary, or unreasonable, or not supported by the record. Such conditions do not exist here therefore the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1964.