



Award No. 5137
Docket No. 4985
2-CB&Q-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Chicago, Burlington & Quincy Railroad Company violated the controlling agreement by closing out of service Carman I. T. Allen, 14th Street Passenger Yard, Chicago, Illinois for allegedly appropriating company material for his own use at the 14th Street Passenger Yard, September 8, 1964.

2. That accordingly, Carman I. T. Allen be reinstated to service of the Chicago, Burlington & Quincy Railroad Company without loss of seniority or pass rights, make claimant whole for all vacation rights, pay the premiums (for hospital association dues) for Hospital, Surgical and Medical Benefits for all time held out of service, and pay the premiums for Group Life Insurance for all time held out of service, and compensate Claimant I. T. Allen for all time lost from September 8, 1964, until so restored.

EMPLOYEES' STATEMENT OF FACTS: Carman I. T. Allen, hereinafter referred to as the claimant, was first employed by the Chicago, Burlington & Quincy Railroad Co., hereinafter referred to as the carrier, on February 18, 1947 as a coach cleaner and was subsequently promoted to car oiler, carman helper, and carman, and established a carman seniority date on August 9, 1958. The claimant, prior to dismissal, had been employed by this carrier for approximately seventeen (17) years and six (6) months.

The claimant's assigned hours were 8 A. M. to 4 P. M., Wednesday through Sunday, with Monday and Tuesday rest days.

On September 8, 1964 Claimant Allen was dismissed from the service of the carrier by a letter from General Foreman V. H. Groback dated September 8, 1964.

In conclusion, the carrier insists that this claim must be denied. In the first place, there is no proper claim for pay before the board, since it was not filed within 60 days of the date of the dismissal of Carman Allen.

With regard to his reinstatement, the board is reminded that —

1. This is strictly a leniency case, it has never been anything else, and leniency is not a proper function of the National Railroad Adjustment Board.
2. Stealing company property is a major offense, one which does not warrant leniency in any circumstances.
3. The long service of Carman Allen, and the fact he paid for the property he stole, does not make his dismissal from the service unjust. He would not divulge the name of the "fence" and the fact that he made restitution only admits his guilt in the first instance.

This claim must 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 employees 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 present claim concerns the dismissal on September 8, 1964, of a carman for appropriating eight locomotive journal brasses and a full case of anti-freeze belonging to the Carrier.

Appropriation by an employe of property that does not belong to him is of course a most serious offense that warrants severe discipline and, ordinarily even dismissal. In the present case, Claimant has been out of Carrier's service for over two and one-half years as a result of his misconduct and we understand that that long layoff has served a useful purpose so far as Claimant's discipline and value as an employe are concerned. He has made full restitution for the property appropriated. In view of these considerations as well as his record of satisfactory service in sixteen and one-half years of employment and other special factors in this case, we will direct that Claimant be reinstated immediately to substantially the same position he occupied on September 8, 1964, with seniority and vacation rights unimpaired but without back pay of any kind.

These Findings are confined to the facts in this record and are not to be controlling in other situations.

AWARD

Claimant reinstated with seniority and vacation rights unimpaired, but without back pay of any kind. All other elements of the claim are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1967.