



Award No. 5138
Docket No. 4986
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 EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1 - The Chicago, Burlington & Quincy Railroad Company violated the controlling agreement by closing out of service John Jones, Coach Cleaner, 14th Street Passenger Yard, Chicago, Illinois for allegedly appropriating company property for his own use at the Car Washer, at Union Avenue, Chicago, Illinois, August 10, 1964.

2 - That accordingly, Coach Cleaner John Jones be reinstated to service of the Chicago, Burlington & Quincy Railroad Company without loss of seniority, make claimant whole for all pass and 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 the claimant, Mr. John Jones, for all time lost from August 11, 1964, until so restored.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner John Jones, hereinafter referred to as the claimant, was discharged from the service of the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, by a letter dated August 11, 1964:

"for appropriating company property for your own use at the Car Washer, at Union Avenue, Chicago, Illinois, August 10, 1964."

Subsequent thereto, claimant requested a hearing as provided in rule 31 of the controlling agreement by letter dated August 12, 1964. Claimant's request for hearing was granted by letter dated August 13, 1964. Hearing was held on Friday, August 21, 1964.

The claimant had worked for the carrier since October 16, 1945, his assigned hours were 8 A.M. to 4:30 P.M.

was dismissed for failing to make out checks for food served to patrons, and failing to remit the money received. Because the chef and waiter-in-charge, who were also dismissed, were subsequently reinstated on a leniency basis, the claim of the waiter was progressed to the board on the basis that he also was entitled to reinstatement. The board held —

THIRD DIVISION AWARD 8574
(JCDE v. CB&Q, Referee Sempliner)

“There appears to be little merit to the claim. Claimant was dishonest. He failed to properly account for Carrier’s funds which came into his possession. This is clear and unequivocal. Where dishonesty is involved leniency cannot be lightly indulged in by the reviewing authority.” (Emphasis ours.)

In the instant case leniency is likewise not to be considered by the board.

In summary, the carrier restates its position in this case as follows:

1. The claimant was guilty of the charge of misappropriating company material, as proved by eye witness testimony, unexplained possession of a great deal of company property, and a signed admission.
2. The past record of claimant, including a dismissal for the same offense, was properly taken into consideration in determining this penalty.
3. His dismissal cannot be considered unjust, and the railroad should not be burdened with this employe.

The claim must be denied in its entirety.

(Exhibits not reproduced.)

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.

Claimant, a coach cleaner with about nineteen years’ employment with Carrier, was dismissed on August 11, 1964, for appropriating Company property consisting of two cases of empty soft drink bottles and such miscellaneous items as 7 towels, 5 wooden hangers, 5 pairs of rubber chemical gloves, a used white waiter jacket, a wash brush and other objects.

While Claimant failed to explain adequately just why he had some of the above items in his possession, enough uncertainty attends the matter to per-

suade us that the record is insufficient to warrant such extreme disciplinary action as discharge for an employe with his length of service.

Under the specific circumstances of the present case, we will direct Carrier to offer Claimant immediate reinstatement to a position substantially similar to that he occupied on August 10, 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 remainder of claim 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.