



Award No. 5745

Docket No. 5644

2-CRR-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 44, RAILWAY EMPLOYES'
DEPARTMENT, AFL - CIO
(CARMEN)**

CLINCHFIELD RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the rules of the current agreement Carman K. E. McInturff was unjustly suspended from service at 4:00 A.M., April 20, 1967 and unjustly dismissed from service May 23, 1967.
2. That accordingly the Carrier be ordered to restore Carman K. E. McInturff to service with seniority rights unimpaired, compensate him for all time lost retroactive to 4:00 A.M., April 20, 1967, make Claimant whole for all vacation rights, pay the premium for hospital, surgical, and medical benefits for all time held out of service, and pay the premium for group life insurance for all time held out of service.

EMPLOYES' STATEMENT OF FACTS: Carman K. E. McInturff, hereinafter referred to as the Claimant, was employed by the Clinchfield Railroad Company, hereinafter referred to as the Carrier, on June 18, 1952, as Carman Apprentice, and after having completed his apprenticeship, established seniority as Carman mechanic at Erwin, Tennessee, December 18, 1956. After having served in various offices of the Brotherhood Railway Carmen of America, he was subsequently elected as General Chairman to represent employes of his Organization on this Carrier, effective January 1, 1966, and served in this capacity until April 27, 1967.

Claimant was regularly assigned on Carrier's Erwin Light Repair Track from 11:00 P.M. to 7:00 A.M., Tuesday through Saturday, with Sunday and Monday rest days. At approximately 4:15 A.M. on April 20, 1967, Claimant was approached by the Chief Special Agent and two of his assistants, and compelled to accompany them to their office in Carrier's General Office building, where he was detained for questioning until around 9:30 A.M. During this time, around 5:00 A.M., Claimant was driven to his home by the three Special Agents for the purpose of searching his premises, after which he was returned to their office until being released at approximately 9:30 A.M. Claimant was awakened at his home

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.

The Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

There is substantial evidence in the record that Claimant while on duty, for personal purposes, altered and damaged two aluminum cross-bars without Carrier's consent. To this extent we must sustain the finding of guilt as charged.

The record does not contain substantial evidence that Claimant was dishonest. Carrier's loose practices relative to disposition of scrap lumber could be reasonably interpreted as a lack of interest on its part as to the disposition of scrap lumber. A substantial amount of such lumber is abandoned by shippers.

Carrier failed to prove that it was Claimant's intention to remove the two aluminum cross bars, which he had altered and damaged, from Carrier's property without consent. In this, the Carrier engaged in speculation. Speculation is without probative value.

In view of Claimant's long years of service we find that the discipline imposed—dismissal from service—was excessive in the light of the limited extent of guilt supported by substantial evidence.

We find the following discipline to be reasonable and will so award:

Claimant shall be reinstated without impairment of his seniority or vacation rights within the time appointed in the Board's Order to Carrier to comply with the Award, below. All other relief prayed for in paragraph 2 of the Claim is denied.

A W A R D

Claim sustained in part and denied in part as set forth in Findings, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.