

Award No. 6214

Docket No. 6016

2-UP-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That the Carrier has unjustly dealt with Carman L. R. Richardson, when on June 5, 1969, they removed him from service on charges of violation of Company Rule 700.

(2) That accordingly the Carrier be ordered to reinstate L. R. Richardson to his former position with his seniority and all other rights and benefits due under agreement rules and pay for all time lost at the pro rata rate of Carmen during the period of his dismissal.

EMPLOYEES' STATEMENT OF FACTS: Carman L. R. Richardson, hereinafter referred to as the claimant, had twenty (20) years of service with the Union Pacific Railroad, hereinafter referred to as the carrier, and his record, up until the date he was removed from service, was unblemished, as shown by his personal record. This investigation was held May 28, 1969, as a result of notice served upon the claimant May 26, 1969, charging him with violation of Company Rule 700, letter of notice also attached as Exhibit A. During the investigation it was developed and acknowledged by the claimant that he was picking up junk pieces of brass off the ground. The investigation also developed that the claimant picked up these junk pieces of brass over a period of a year, which indicates no fraudulent intent of theft. This is borne out by the fact the total accumulation amounted in sale value to \$21.95.

POSITION OF EMPLOYEES: The employees feel that claimant was unjustly dealt with as intended by agreement Rule 35, which reads, in pertinent part:

"Should any employe subject to this agreement believe he has been unjustly dealt with, etc."

It was not intended that this rule should operate so as to permit employes to receive double compensation, which would be the case if no deductions were made for the amounts actually earned during period of discharge or suspension from the carrier's service.

Carrier submits that it has a right to discipline an employe for just cause as it has done in this case when evidence adduced at the formal hearing was substantial and conclusively showed that claimant was guilty by his own admission of theft of journal bearings and brass journal stops belonging to the carrier and selling this appropriated company property to the B&G Metal Company, his actions of appropriating such property extended for over a year and he freely admitted the proven dishonesty was wrong and in violation of company rules.

The carrier did not act in an unreasonable, arbitrary, capricious or discriminatory manner, and did not abuse its discretion in the handling of this matter.

The degree of discipline was reasonably related to the seriousness of the offense for which he was charged, and there is no reasonable basis for the Board to disturb or set aside the discipline assessed in this case.

In conclusion, carrier wishes to point out that the discharge of claimant, based upon the evidence produced at the investigation held on May 28, 1969, was the only proper course open to this Carrier. To do otherwise would be to ignore a glaring example of open and flagrant violation of the terms and conditions of the employment agreement between the parties to this dispute; to ignore such illegal conduct which has from time immemorial been considered and acknowledged on all railroads by management and employes alike to constitute good and sufficient grounds for dismissal from service. The carrier is responsible for the safe, efficient and orderly conduct of the business in which it is engaged, and if it is to properly discharge that responsibility, it must be allowed to exercise proper discipline among its employes.

It is respectfully submitted that the claim is without foundation under the applicable agreement and should be denied.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the organization in this case, to make such further answers as may be necessary in relation to all allegations and claims as may be advanced by the organization in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

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.

There is no question that the Claimant took property of the Carrier, sold it, and appropriated the proceeds. Specifically, Claimant took brass pieces from journal boxes and sold it to a junk dealer. Brass is a valuable metal. It can be recycled and converted to many uses.

Claimant and the Organization admit the taking and disposing for gain of Carrier's property. They contend only that the amount involved (\$21.95) is small, that the Claimant had a good record, with no previous disciplines in about twenty (20) years of service. For all these reasons the discharge penalty is too severe.

This neutral has been a party to awards where the penalty of discharge was modified and the grievant was reinstated with some or no back pay. But these did not involve felonious acts. Where the latter is involved, as here, and where the crime, however small, is proven beyond any reasonable doubt, this Board should not substitute its judgment for that of the Carrier. A dismissal penalty under these circumstances is not arbitrary or capricious. Furthermore, this Board has no authority to entertain a plea for leniency.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1971.