



Award No. 6239
Docket No. 6099-I
2-AT&SF-I-'72

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

CLYDE NOAH HESSOM, Petitioner

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

DISPUTE: CLAIM OF EMPLOYEES:

The question upon which the award is desired against the AT&SF Railroad is, "I did not have a formal investigation, at which time, I could have proven the charges of appropriating Company Property for my own use and leaving Company Property, were untrue."

EMPLOYEE'S STATEMENT OF FACTS: I am 50 years old, and have worked for the AT&SF Railroad since March 28, 1947. I have never stolen anything in my life. I had 46 Journal Brass that I had found at the Barstow City Dump in the latter part of March, 1969. I should have turned them in right away, but I did not want to get involved. There are two railroads in this area: Union Pacific and AT&SF Railroads. They could have belonged to either one. I was going to put them on the AT&SF Property as soon as I could. The District Attorney's Office investigated me for these charges and told my Lawyer that the only charge would be receiving stolen property, a misdemeanor.

On December 20, 1969, Don Hall, Special Agent for the AT&SF Railroad, brought his car over to the area in the freight yards where I worked, and asked me if I would clean his engine off. He said that his water pump was bad, and he was going to have it changed that night. I have known this man for five years, and I thought he was a friend of mine. I told him I had 46 Journal Brass, and told him that I had found them in the Barstow City Dump. His answer was: "Don't bring them down here while I am around." I did not see this Special Agent until December 24, 1969, in the Harvey House. I went in for coffee, and he came over to my table and had coffee with me. He said he got his water pump changed and still had a leak. He asked me if I would give him a can of Bardahl Radiator Stop Leak and a can of antifreeze. I got him the two cans out of the locker. At this time I told Mr. Hall that next Wednesday I was going to bring these Journal Brass back before I started work at 7 o'clock and set them in front of the car shed on the other side of the yards; there was never anyone around at 6:30 in the morning. His answer was: "Don't let anyone see you."

On May 13, 1970, Mr. Hessom appeared in Superior Court at San Bernardino, California, and entered a plea of guilty to the charge of receiving stolen property. On June 24, 1970, Mr. Hessom was sentenced to 180 days in jail, which was suspended and he was placed on two years' probation.

It is abundantly clear that Mr. Hessom's statement to the Board, which is quoted above, is entirely incorrect.

For the reasons stated herein, the Carrier respectfully submits that the claim should be either dismissed or denied and requests that the Board so find.

The Carrier is uninformed as to the arguments Petitioner will advance in his ex parte submission, and, accordingly, reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to Petitioner's ex parte 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.

The record in this case conclusively indicates that this claim has never been handled with the Carrier in appeal order; was not handled by claimant within the time pursuant to Rule 33 of the applicable agreement; and, finally, claimant never discussed this claim with Carrier in conference (Section 2, Second and Sixth of the Railway Labor Act).

Claimant's failure to comply with the foregoing constitutes automatic default and, therefore, the claim is barred. See Second Division Awards 2240, 4027, 4031, 4175, 4178 and 5308.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February, 1972.

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