

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

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement Carman E. J. Brandon was unjustly dealt with on May 22, 1972 when the Carrier arbitrarily placed the following censure on his personal record: suspending him from the service for a period of ten (10) days commencing on May 23, 1972 through June 1, 1972, inclusive.
2. That accordingly, the Carrier be ordered to pay Carman Brandon eight (8) hours pay for each work day between May 23, 1972 and June 1, 1972, inclusive; to remove the entry of censure from his personal record; and to restore all other benefits accruing active employees during that period.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant, a car inspector, was issued a "walkie-talkie" radio when he started his shift. He knew that he was required to turn it in at the end of his shift. On the day in question, his shift was 7 A.M. to 3 P.M. He attended a safety meeting in the afternoon at which he had the radio. When he was half way home he recalled that he had not turned in the radio but did not return to the yard or the car where the meeting was held to look for it. At 3:30 P.M., his supervisor noted that the radio had not been turned in and telephoned claimant's home to inquire concerning it but no one answered the phone call. At 10 A.M., the next morning, the supervisor questioned claimant about the radio. They looked for it but it could not be found. The radio was identified by number, the claimant admitted receiving it and admitted that he "forgot" to turn it in at the end of his shift.

Its value was \$702.00. These are the material and relevant facts testified to in the Record. The claimant at the hearing stated that he received proper notice of the hearing, that he was represented and that he had no witnesses.

The Organization has submitted for determination the following, in substance: Was there a fair and impartial hearing pursuant to Rule 35 (a) of the Agreement?; did Carrier prove its case by a preponderance of relevant evidence?; was the discipline assessed reasonable? In addition, the Organization contended that claimant did not "lose" the radio (the hearing was to investigate "the alleged loss" of the radio), and that if a carrying case and belt had been issued, the claimant would have had the radio strapped on him and would not have left it in the car where the safety hearing was held.

The Carrier has contended that adequate testimony and documentary evidence was introduced at the hearing to identify the radio issued to claimant; that claimant did receive the radio; that claimant had the radio at the safety meeting during the late afternoon of his shift; that claimant failed to turn it in; that claimant did not report its disappearance; that claimant "forgot" the radio when he left the safety meeting; that the radio could not be found; that claimant was aware of Rule 705 of the Safety Rule Book which requires that: "Employees must exercise care and economy in the use of railroad property,---, or upon demand by proper authority, must return property entrusted to their care."; that the value of the radio was \$702.00; that a fair and impartial hearing was conducted; and that the discipline assessed was not excessive.

The Record of the Hearing disclosed that it was conducted fairly and impartially. The claimant was adequately represented. Not only was the proof offered by the carrier as stated above convincing but the claimant also testified to the truth of the material and relevant facts stated by the Carrier's witnesses. The failure of the Carrier to provide a carrying case and belt is not an excuse for the claimant's failure to exercise proper care. The fault was the failure to turn in the radio. When the radio's disappearance could not be accounted for, it was lost. By the claimant's admission, its loss was due to his forgetting it. The discipline assessed under these circumstances was not unreasonable, arbitrary or excessive.

A W A R D

Claim denied.

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Award No. 6747
Docket No. 6519
2-BNI-CM-'74

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.

