

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Southern Pacific Transportation Company
((Pacific Lines)

Dispute: Claim of Employees:

1. That under the current Agreement the Carrier improperly suspended on March 5, 1974, and subsequently dismissed Machinist A. V. Gutierrez (herein after referred to as Claimant) from service on March 15, 1974.
2. That, accordingly, Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired, including vacation and insurance benefits and with compensation for all time lost from date of dismissal to date of restoration to service.

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.

Claimant was accused of stealing journal brass that belonged to his employer, Southern Pacific Transportation Company. There is in the record substantial evidence to the effect that Claimant admitted the theft and admitted the brass belonged to Southern Pacific Transportation Company. This admission is neither attacked, contradicted nor explained and it necessarily supports the Carrier's case. The fact that Claimant chose not to make any statement in the hearing does not constitute a denial of fairness. He did so on advice of counsel and he did so voluntarily.

There is no basis for the claim that an investigation of a rule violation must await a pending criminal proceeding for the same offense. There are ample awards in support of the view that these are separate and independent matters and there is no necessary reason to link one to the other. See Second Division Award, Referee David Dolnick, No. 6619.

We reached this conclusion without reference to Carrier's Exhibit "C". There are indications in the record to the effect that this exhibit includes admissions by the Claimant. For example, see Carrier's Rebuttal Page 3. A careful review of the three documents purporting to be Exhibit "C" does not confirm this. Whatever purpose this exhibit was intended to serve, its submission did not prejudice Claimant in any way because Carrier's decision was supported in the record without reference to this exhibit.

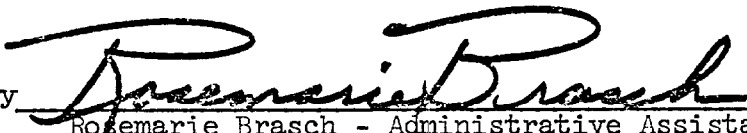
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of January, 1976.