

The Second Division consisted of the regular members and in addition Referee David P. Twomey 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 the Burlington Northern, Inc. improperly withheld Carman A. Hughes, Cicero, Illinois from service November 26, 1973 pending investigation and dismissed him from service December 21, 1973.
2. That the Burlington Northern, Inc. be ordered to:
 - a. Compensate Carman A. Hughes, Cicero, Illinois in the amount of eight (8) hours pay for each work day starting November 26, 1973 until restored to service.
 - b. Restore to Carman A. Hughes, Cicero, Illinois, all seniority, vacation rights unimpaired; that premium be paid for Hospital, Surgical, Medical Benefits and Group Life Insurance for all time held out of service and all other benefits accruing active employees during this period be restored.

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.

The Claimant, A. Hughes, a Carman with less than eight months service, was dismissed from the service of the Carrier for violation of Rules 661 and 663 of the Burlington Northern Safety Rules by the unauthorized appropriation of Carrier's oil and gasoline for use in his personal automobile about 4:15 A.M., November 25, 1973 while assigned as a Carman, 11:00 P.M. to 7:00 A.M., Cicero, Illinois.

The record discloses that the Claimant was given a fair and impartial Investigation, at which he was very ably represented by the local chairman of the Carmen's Organization and at which he and his representative were given the opportunity to present their case and were allowed to question all witnesses.

At the Investigation, the Claimant denied taking oil or gasoline for his own personal automobile. To the contrary, three witnesses testified that the Claimant admitted in their presence to taking oil and gasoline. See the testimony of Mr. Boyer, Special Agent, (Tr. p. 3), Mr. G. L. Thoman, Patrolman (Tr. p. 8) and Mr. J. Nix, Car Foreman (Tr. p. 11).

We find that there is very substantial evidence in the instant case to support the Carrier's finding of guilt. We find that the discipline of dismissal in the instant case is not arbitrary, capricious or excessive.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July, 1976.