

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7142
Docket No. 6955
2-BNI-CM-'76

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

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

Dispute: Claim of Employee:

1. That the Burlington Northern Inc. improperly and unjustly dismissed Car Inspector M. J. Maiers, Denver, Colorado, from service for alleged theft, burglary and conspiracy, and for failure to protect his assignment as Car Inspector.
2. That accordingly, the Burlington Northern Inc. be required to reinstate Car Inspector M. J. Maiers to service with seniority, vacation, pass rights and job protection benefits; that Carrier pay the premiums for hospital, surgical, medical and life insurance benefits for all time withheld from service; that Claimant be compensated eight (8) hours per each work day, commencing on September 5, 1973 and continuing until reinstated to service, and restore all other benefits accruing other employees in active service during period of dismissal.

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 was charged with theft, burglary and conspiracy, as well as a failure to protect his assignment on August 21, 1973. All of the above arose as a result of his asserted complicity (along with two employees of the Colorado and Southern Railway Company) in the theft of thirty-three (33) boxes of frozen turkeys from a mechanical refrigerator car.

Subsequent to investigation, Claimant was dismissed from service.

This Board is of the view that the Carrier presented substantive evidence, at the investigation, to show that claimant did not protect his assignment on August 21, 1973, and that claimant was guilty of theft. Not only was the bulk of testimony presented by Carrier's witnesses unchallenged, claimant refused to answer pertinent questions directed to him concerning the theft allegations. Such a failure to respond does raise certain inferences in a fact-finding investigation, inasmuch as accused employees are expected to answer questions in disciplinary investigations. See Second Division Award 4749 and Third Division Award 19558.

It is noted that the disputes of the two employees of the Colorado and Southern Railway Company were heard by Public Law Board No. 1369. In that Board's Award No. 5, their claim was denied. As in that case, we find no basis for setting aside the discipline imposed.

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 15th day of October, 1976.