

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. 117, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That Carman R. C. Walsh was improperly dismissed from service with the Western Pacific Railroad on date of March 1, 1973.
2. That accordingly, Carrier be ordered to reinstate Carman Walsh to service with all his rights unimpaired and that he be compensated for all lost wages. In addition to wages the claim shall include the following:
 - (1) Return to service with seniority rights unimpaired;
 - (2) Make whole for all vacation rights;
 - (3) Make whole for all health and welfare insurance benefits;
 - (4) Make whole for pension benefits, including railroad retirement and unemployment insurance;
 - (5) Make whole for any other benefits that he would have earned during the time he was held out of 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.

On December 14, 1972, Claimant and his father were instructed to attend a formal investigation concerning: (1) exchanging duties with others, (2) substituting others in their place, (3) absence without permission and, (4) submission of false time card.

Subsequent to investigation, Claimant was dismissed from service.

In addition to its other defenses, Claimant asserts that the charges against him were not precise, as required by Rule 36. We have noted that the charge did not contain the date of the asserted offenses. However, we find no evidence that said omission was, in any manner, prejudicial under this record inasmuch as the Hearing Officer permitted wide latitude in presentation of evidence and granted a recess to allow a witness to obtain evidence which he felt was pertinent to the case. Based upon the entire record, we find no procedural errors which would preclude our consideration of the case on its merits.

The Claimant was assigned to work a shift starting at Midnight of December 2, extending through 8:00 a.m. of December 3. He testified that he did work on that shift, and it is not disputed that he filled out a time card for the shift.

However, the Leadman and the Yardmaster, on duty at the same time, testified that it was Claimant's father (also a Carrier employee) who actually performed the work. There is also an indication that the father sought to have the pertinent records marked in a manner which would suggest that the son had worked and that there may have been some intimidation of potential witnesses.

Claimant's father denied that he performed the work in question and proffered certain documents which he urged established his whereabouts in a different geographical area.

It is not our function, of course, to resolve issues of credibility. We cannot state that the record is devoid of evidence to support the Carrier's ultimate conclusion of guilt. While there was some innuendo raised as to the believability of the Leadman, there was nothing presented which would cast any serious doubt upon the Yardmaster's clear identification of the father as the employee who worked on the shift in question.

Moreover, we find no basis for disturbing the quantum of 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of January, 1977.