

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: ( System Federation No. 18, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
(  
( Boston and Maine Corporation, Debtor

Dispute: Claim of Employees:

1. That under the current agreement, Night Watchman Donald J. McFarlane, Jr., North Billerica, Massachusetts, was unjustly suspended from the service of the Carrier on July 8, 1976, and then dismissed as a result of investigation held on date of July 16, 1976.
2. That accordingly the Carrier be ordered to return Night Watchman Donald J. McFarlane, Jr., to service with all rights unimpaired and compensated for all time lost as a result of unjust suspension and 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 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.

The facts giving rise to the instant claim are as follows: The Claimant was employed by the Carrier in the position of Night Watchman at North Billerica, Mass. By letter dated July 9, 1976, the Claimant was notified to appear for a hearing scheduled to be held on July 16, 1976 to develop the facts and to place responsibility in connection with charges that the Claimant had allegedly been an accomplice to the theft of Company material from the material yard at North Billerica, which yard was within the area encompassed in Claimant's watchman territory.

In the handling of this case on the property and before our Board, Petitioner has raised certain procedural issues such as violation of Claimant's due process rights, credibility of witnesses, circumstantial evidence and an unfair hearing.

This Board has regularly refused to interfere with a Carrier's determination as to disciplinary action taken for proven infractions except in instances where the Carrier is shown to have acted in an unreasonable, arbitrary, capricious or discriminatory manner which amounts to an abuse of discretion.

In the conduct of investigations and hearings to determine guilt or responsibility in a particular case, the Carrier is not bound to prove justification beyond a reasonable doubt as in a criminal case or even by a preponderance of evidence as does the party having the burden of proof in a civil case. The accepted maxim in Railroad discipline is that there must be substantial evidence in support of Carrier's action. "Substantial evidence" has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs. Labor Board 305 U.S. 197, 229).

In the instant claim, we have carefully reviewed the entire record and have seriously considered all of the arguments advanced by the concerned parties. We are fully aware that dismissal from service is a most serious matter. However, we are likewise aware that the offense of theft of Company material is a most serious matter, warranting discipline in the form of dismissal. From this record we are not able to conclude that Carrier's action was unreasonable, arbitrary, capricious or discriminatory. The offense was serious, the evidence against the claimant was substantial, the conduct of the hearing provided the necessary elements to make a valid determination of culpability. The Claimant was properly disciplined after being afforded his due process rights. Therefore, we cannot substitute our judgement for that of the Carrier. The Claim shall be denied.

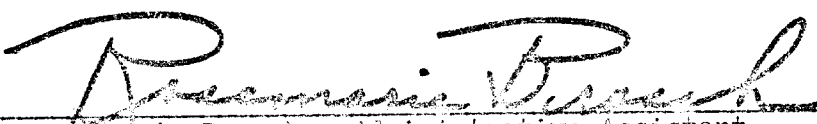
A W A R D

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 4th day of April, 1978.