

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That Machinist J. E. Dawson was unjustly dealt with by the Missouri-Kansas-Texas Railroad when on December 9, 1975, was discharged from the service of the Carrier resulting from Hearing of December 3, 1975, on the following charges:
 - A. Unauthorized use of company vehicle October 19, 1975.
 - B. Failure to report accident to State authority.
 - C. Not reporting for duty October 20, 1975.
 - D. False statement to Claim Agent October 21, 1975, relative of personal injury.
 - E. Falsifying certain items on October, 1975 expense account.In violation of D.P. of General Rules, 1975, D-1 Safety of Self; D-4 Dishonesty; K-1 False Report; K-3 Falsifying Expense Account.
2. That, accordingly, Claimant be returned to duty with seniority rights unimpaired and made whole for all monetary losses, per applicable Agreement.

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 employees 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.

This dispute involves the discharge from service of Claimant J. E. Dawson on December 9, 1975. Dawson had been serving as Maintenance of Way Roadway Mechanic, while the Organization bringing the claim to the Board is the International Association of Machinists and Aerospace Workers.

In its submission to the Board, the Carrier alleges that the Second Division does not have jurisdiction and points to the absence of a fully detailed agreement covering Dawson's position. The Board finds sufficient grounds to establish that the claim is properly before the Second Division of the Board for resolution, and that Dawson is not in an unprotected position without organizational support.

Dawson is charged with a series of offenses arising from his actions over a nine-day period. The alleged offenses are specified in the Statement of Claim, while the Rules alleged to have been violated are, in pertinent part, as follows:

"D. Employees must not be:

(1) Careless of the safety of themselves and others.

...

(4) Dishonest.

..."

"K. Employees found guilty of

(1) making false reports or statements or concealing matters under investigation.

...

(3) falsifying expense reports, or submitting fraudulent receipts to support claimed expenses.

will be subject to such disciplinary action as the circumstances demand."

An extensive investigative hearing, following due notice to the Claimant, was conducted on December 3, 1975. The Board has carefully reviewed the testimony offered. The hearing is not marked by numerous conflicts in testimony, as is sometimes the case. Rather, it is more significant that there are widely different interpretations by the Organization and the Carrier as to the events related at the hearing. The Board, in reaching its decision, need not resolve conflicts in testimony (a matter principally for the hearing officer) but must choose between the varying interpretations of the facts.

Without recounting the testimony in detail, a summary of events shows the following:

Claimant was headquartered in Parsons, Kansas, but assigned to work 700 miles distant in Texas. He was authorized to travel between his home and assignment by company vehicle. He attached a trailer to the company-owned vehicle from Texas to Kansas with a view to returning to Texas towing his own car, in order to have it at the Texas location. Serious question exists as to whether Dawson notified and/or requested permission from his supervisor as to use of the trailer. The evidence indicates that, at minimum, Dawson did not attempt to conceal the use of the trailer and had previously stated his intention of bringing his own car back with him behind the company's vehicle. The offense involved here is questionable, and surely not of a degree warranting discharge.

Near his headquarters in Kansas, Dawson involved the company vehicle in a serious one-vehicle accident. He immediately reported it by telephone to the Carrier and, as directed, followed this with a written report to the Carrier. His failure to supplement this by a report to the state police -- given the circumstances of no involvement with another person or vehicle -- is again not an offense of serious nature. No attempt was made to disguise the time, gravity or nature of the accident.

It appears that the accident, with the delays for repair, etc., was directly related to two other alleged offenses -- improper charges for motel accommodations in Texas during this period, and failure to report for work as scheduled on Monday, October 20, the day following the accident.

The Claimant had not checked out of the motel during the period in question, and a motel charge was made and settled for these days. No indication of personal gain for the Claimant is even alleged. If the Carrier had challenged the propriety of the charges, it had only to disallow it and/or question the employee. Again, Claimant offered his reasoning as to why he believed the expense was chargeable to the Carrier. While he may have been in error, he was not deceitful in his actions. Similar reasoning applies to meals charged during this period.

Dawson's absence from work on October 20 was, as fully known to the Carrier, 18 hours after a serious vehicle accident 700 miles away.

To compound the situation, Dawson did report to work on October 21 and while at work suffered a traumatic accident involving his eyes. Here the Carrier claims that Dawson made a "false statement" concerning the details of the accident. The record fails to show that the Carrier proved a lack of validity in the statement made by Dawson.

The Board takes extreme caution in interfering with a Carrier's disciplinary action, especially when violation of specific rules is cited and where (as here) a full and impartial hearing is conducted. In this

claim, however, it is clear that the initial charges were based on tenuous presumptions and that the hearing -- far from supporting the charges -- should have led to the conclusion that the Carrier's proposed disciplinary action was ill-founded. A series of charges, each of modest import, may in some circumstances combine to justify a major disciplinary penalty. In this instance, however, close examination of each of the charges yields little of substance as to employee misconduct. The reeds are too thin and brittle, even when banded together, to support the penalty.

A W A R D

Claim sustained.

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 9th day of May, 1978.