

The Second Division consisted of the regular members and in addition Referee James F. Scarce when award was rendered.

Parties to Dispute: ( System Federation No. 114, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
(  
( Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current agreement Firemen and Oiler, J. J. Jarone, was unjustly suspended on February 10, 1976, and dismissed from the service of the Carrier, on April 29, 1976, following an unfair and improper hearing.
2. That accordingly, the Carrier be order to:
  - (a) Restore the aforesaid employee to service with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.
  - (b) Reinstate all vacation rights to the aforesaid employee.
  - (c) Pay employee's group medical insurance contributions, including group medical disability, dependents' hospital, surgical and medical and death benefits premiums for all time that the aforesaid employee is 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.

For sometime prior to the incident involving the Claimant for which he was suspended and subsequently dismissed, the Carrier had experienced thefts of liquor shipped from its Roseville, California, terminal to its San Jose, California, terminal. To stop such thefts, the Carrier prepped a shipment of liquor in a special railroad car with certain security measures in order to track movement around the car and the movement of cases of the

liquor after the shipment arrived at the San Jose facility. Such measures entailed placement of devices on the car that would permit data on ingress and egress from the car. Television monitoring devices were placed to permit observation of movement in and around the car. In addition, the floor of the car was treated with a mixture of light oil and copper dusting powder and a fine oak ash to provide special evidence on the shoes and clothes of such entry. In addition, the seal number on the door was recorded and was checked periodically to ensure against tampering or alteration. On February 9, 1976, the car containing the special liquor shipment was in place at a pre-determined, observable vantage point in the San Jose yard. At 11:20 a.m. a routine seal inspection indicated that the car had a different seal on it than was originally used. At about 2:00 p.m. a white pickup was observed near the car. The occupants of the truck were moving something from a rail car thought to be empty located on the track adjacent to the car containing the liquor. A 4 X 8 sheet of plywood was placed over the objects. The truck was intercepted and eight cases of liquor were found in the bed; this liquor was checked against the bill of lading for the liquor shipment and found to be part of that shipment. Additionally, voids were found in the liquor stack where cases had been. The security officials asked the Claimant and his accomplice for permission to search the truck and were permitted to do so; they found one unused car seal and a glove which appeared to have the compound used to treat the car containing the liquor.

The Claimant was suspended from service on February 10, 1976. Investigation and hearings were held on February 26, 1976 and April 12, 1976. The Claimant was dismissed from service on April 29, 1976. The Organization contends that he was unjustly suspended and dismissed in violation of controlling agreements; that the Claimant and a fellow employee had found the liquor in an empty freight car and were endeavoring to turn it in to the yard office.

The record supports the disciplinary action by the Carrier. While certain parts of the evidence adduced in the record are circumstantial, the network of proof is so interconnected as to establish beyond a reasonable doubt that the Carrier has brought action against the culpable party. The Organization's key defense is that the Claimant and his accomplice were endeavoring to return the liquor to the yard office, and yet they passed up an opportunity enroute from the location of the car containing the liquor to do so; they then drove a circuitous route with the apparent intent of eluding the security officer and when finally encountered and asked what was in the rear of the truck, did not mention the liquor. Carrier acted properly in enforcing Rule 801, which reads, in part: "Employees will not be retained in the service who are ... dishonest ..."

Form 1  
Page 3

Award No. 7562  
Docket No. 7478  
2-SPT-FO-'78

A W A R D

Claim is 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 16th day of June, 1978.