

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carman)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement, when they unjustly dismissed Carman William Johnson from its' service by letter dated June 27, 1975, after formal investigation was held June 9, 1975.
2. That accordingly, the Norfolk and Western Railway Company be ordered to restore Carman William Johnson to service with seniority rights unimpaired, and compensated for all time lost, plus eight (8) percent interest.

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.

Claimant was dismissed for removing a gallon of 707 Cleaner valued at \$2.73 from Carrier's property. Claimant was stopped in a passenger car driven by a fellow employee a short distance from Carrier's property, by a Carrier Special Agent, who found the gallon of cleaner in the car.

The events leading to this discovery are as follows:

An Assistant Car Foreman saw claimant leaving the Repair Building. At that moment, he was beckoned by a Gang Foreman who told him that "he though (Claimant) was trying to take something from the Company property." The Gang Foreman pointed to a can, partly covered by a rag, sitting on a work bench. After waiting for about one-half hour to see whether Claimant would return and pick up the can, the Assistant Car Foreman left, but returned to

his observation post about one and one-half hours later and found the can still sitting on the work bench. About one-half hour later, the Gang Foreman reported to the Assistant Car Foreman's office and advised him that the can was missing. Carrier's Special Agent, who had earlier been informed of the situation, was called on the radio and notified that Claimant had left the premises in a car. The Special Agent shortly after reported by radio that he had stopped the car.

The hearing record discloses contradictory assertions as to whether employees and, in fact, supervisors, made use of Carrier solvent to clean their clothes on or off the property, or to use on their personal cars. In this respect, the record is unsatisfactory as to whether such practice or custom actually prevailed on the property.

As a general principle it is better to take steps to deter or prevent the commission of a wrongful act when possible, than to sit and await the commission of such an act. The can in question remained on the work bench for almost 3 hours on the day of the incident, under observation at various times, by at least two supervisory employees. Removal of the can by the supervisors to its proper location would have prevented removal from the property by Claimant, however valid his belief that such action was not erroneous or illegal in the light of his repeated assertion that other employees and supervisors also used the solvent for personal use. Other employees called to testify in Claimant's behalf stated that they had seen employees use the solvent for cleaning clothes.

It would have been relatively simple, at the time the can was still on the work bench, to ask Claimant whether he had been authorized to draw the solvent from the barrel containing the material, who had authorized it, and for what purpose. While such questions might have alerted Claimant that he had been linked or observed with the unattended can of solvent, they would also undoubtedly have had a salutary deterrent effect if, in fact, he had felonious intentions.

We have no intention of excusing theft, however minor. In the case before us, despite some contradictory statements made at the hearing, one might reasonably conclude that other employees (and, possibly, some supervisors) had used solvents and cleaners for their own use, so that employees could believe that the practice was condoned. In light of such a belief, Claimant may in good faith have concluded, however mistakenly, that taking the cleaner was not contrary to Carrier rules or was tolerated by management. Management's actions in this case, as noted above, are not entirely blameless.

A carrier, especially in this industry, must be able to rely upon the integrity and honesty of its employees. Dishonesty in any form is a matter of serious concern, and if proven, subjects one found guilty of dishonesty to the penalty of discharge. Regardless of Claimant's impression that there was a custom or practice of personal use of cleaners or solvents, he was still not authorized to remove a can of cleaning fluid, however small in size

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or value, (or any other item, for that matter) from his employer's property. This principle is an essential component of the Award stated below.


For the reasons given above, relating primarily to the uncertain status of past practice with regard to personal use of cleaners or solvents, we will reinstate Claimant, but without back pay.

A W A R D

Claimant shall be reinstated without back pay.

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 25th day of October, 1978.