

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

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

Dispute: Claim of Employees:

1. That under the current agreement, Carman J. A. Terry, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of October 1, 1976 after eleven (11) years of service with the Carrier.
2. That the Carrier be ordered to:
 - (a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and be compensated for all time lost retroactive to October 1, 1976, when he was unjustly removed from service.
 - (b) Grant to the Claimant all vacation rights he would have had, had he not been removed from service.
 - (c) Assume and pay all premiums for hospital, surgical and medical benefits, for Claimant and dependants. Including all costs for life insurance.
 - (d) Pay into the Railroad Retirement Fund the maximum amount that is required to be paid for an active employee, for all time he 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 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.

Claimant, a Car Inspector, was observed by a carrier patrolman removing an alternator from the engine compartment of a pick-up truck being transported on a tri-level flat car designed for the transportation of vehicles, while the car was in a train in Carrier's receiving yard. The patrolman testified that he observed Claimant bending over under the hood, which was raised.

The patrolman then observed Claimant removing the alternator from the truck, slam down the hood, jump off the flat car, and place the alternator underneath the seat of his yard inspection vehicle. At that point, the patrolman requested Claimant to remove the alternator from underneath the seat of the yard inspection vehicle and accompany him to the yard office, where they were joined by Claimant's supervisor and other Carrier supervisory officials. The patrolman then verified that an alternator was missing from the pick-up truck in question.

Claimant stated at the hearing that he observed the alternator close by the wheel of the vehicle on the deck of the flat car underneath the pick-up truck as he was making his inspection rounds. In a written statement that he wrote on the day of the incident, he stated that he picked up the alternator to bring it in to the office.

The patrolman's testimony was clear, forthright, and unequivocal. The Carrier had a right to rely on the patrolman's statement and testimony, which was subjected to close cross-examination at the hearing, unless there was a substantial reason not to believe its witness. No such reason was expressly stated or implied in the record before us.

Although Claimant stated that he picked up the alternator with the intention of carrying it to Carrier's office on the property, he was unable to contradict the patrolman's testimony that he was observed bending over the pick-up truck, where the hood was raised and removing the alternator. On the basis of the patrolman's written statement and testimony at the hearing, Carrier concluded that Claimant intended to remove the alternator from the property.

Under these circumstances, we find that Carrier's action in dismissing Claimant was neither arbitrary nor capricious. Its conclusions as to Claimant's guilt are supported by the record.

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 25th day of October, 1978.