

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
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(Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That under the terms of the Agreement, Machinist H. L. Barmer was unjustly suspended from the service of the Alton and Southern Railway Company on the date of July 1, 1976, pending investigation. Investigation was completed on the date of August 18, 1976, on the date of August 20, 1976, he was notified that he was dismissed from the service of The Alton and Southern Railway Company as of August 20, 1976.
2. That accordingly, the Alton and Southern Railway Company be ordered to compensate Machinist H. L. Barmer in the amount of eight (8) hours at the pro rata rate for each day of his work week assignment beginning on the date of July 1, 1976, with 6% annual interest.
3. And, further, that he be restored to service, with all rights unimpaired, health and welfare benefits restored and paid for during the time he is held out of service and all seniority and vacation rights restored as if he had continued in the employment of the Alton and Southern Railway Company.

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 suspended on July 1, 1976 in connection with the removal of merchandise from container no. MOLU 290 988 on car TTAX 974353 on or about 11:50 P.M. on June 30, 1976.

A lengthy investigative hearing was held which ended on August 18, 1976 and claimant was apprised by letter dated August 20, 1976, that he was dismissed from service.

Recognizing that a recent Fourth Division Award 3566 (Referee Twomey) has disposed of similar charges against a Car Foreman, who was implicated in this case, we must of judicial necessity take cognizance of its holding.

We agree with this award that the investigative record contains many testimonial contradictions, but we concur with its finding that the record supports carrier's ascertainment of responsibility.

We realize that the original incriminating admissions of another employe were repudiated by claimant and the inferential possibilities of the open locker, but we find the main contours of the evidentiary record supportive of our conclusion.

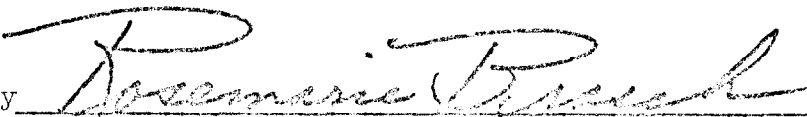
Moreover, we also agree with the Fourth Division Award that the dismissal penalty is too excessive under the narrow circumstances of this case and accordingly, claimant should be returned to service with all rights unimpaired, but without back pay. We are asking no more substantive evidence in this case than the Twomey Award.

A W A R D

Claim sustained to the extent expressed in our opinion.

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 1st day of November, 1978.