

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International
 { Association
 {
 { Alton and Southern Railway Company

Dispute: Claim of Employees:

1. That the Alton and Southern Railroad Company violated the controlling agreement, particularly Rules 19 and 22 when they unjustly dismissed Sheet Metal Worker Eugene E. Stanford from their service effective July 1, 1976.
2. That accordingly, the Alton and Southern Railroad be ordered to return Sheet Metal Worker Eugene E. Stanford to service with all seniority rights unimpaired and compensate him as follows:
 1. Compensate Claimant for all time lost with 6% interest per annum.
 2. Pay all Hospital Association dues for all time out of service.
 3. Make whole for all vacation rights.
 4. Pay premiums for Group Life Insurance for all time held out of service.
 5. Compensate Claimant for all holidays while out of service.
 6. Compensate Claimant for all sick pay.
 7. Make whole for all insurance premiums.
 8. Compensate Claimant for all jury duty pay lost.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, on June 30, 1976, had been employed as a Sheet Metal Worker for some seven (7) years and was working the third shift, 11:00 PM to 7:00 AM at Carrier's East St. Louis Mechanical facility.

Carrier's Special Agent observed two persons, later determined to be Claimant and another employee removing merchandise which had spilled out of a trailer and onto a flat car on which the trailer was loaded. The other employee was on the flat car and he handed boxes, later found to contain hibachis, down to Claimant who was observed placing a carton of such merchandise in the trunk of his automobile, closing the trunk and driving away from the location of the trailer and flat car. Said Chief Special Agent contacted another Carrier Patrolman and directed him to intercept this car.

Carrier patrolman stopped Claimant's vehicle and waited until the Chief Special Agent and a Trainmaster arrived at the location of the car. They identified themselves to the driver of that car, Mr. Eugene Stanford, the Claimant herein, a Sheet Metal Worker and an on-duty employee of this Carrier. Claimant was requested to open the trunk of his car and did so. Therein was found the box which had been taken from trailer MOLU 290988. In this box was later found three portable barbeque grills or hibachis.

Claimant, who had been advised of his constitutional rights, was taken by the police to Carrier's General Office Building. Subsequently, Claimant requested to talk to one of the Patrolmen and in his presence made and signed a written statement which implicated several other employees. Claimant implicated the Car Foreman, who, according to such statement, said that he wanted two hibachis, two Machinists and a Caboose Supply Man, who, incidentally was the other employee observed in the act of passing two boxes down from inside the trailer. Claimant's voluntary statement was signed by Claimant, witnessed by the Chief Special Agent and the Patrolman, at 2:00 AM on July 1, 1976, some 2 1/2 hours after Claimant was first observed loading the box of merchandise into the trunk of his car.

A subsequent inspection by the police of the employee's locker room uncovered seven hibachis. The locker of one of the employees incriminated by Claimant was inspected and three hibachis were found therein, two of which were still in boxes. Claimant and four other employees, the Caboose Supply Man, two Machinists and the Car Foreman, were given the following notice of investigation:

"Arrange to report to the Alton and Southern Railway Company Conference Room, 1000 South Twenty-Second Street, East St. Louis, Illinois, at 9:00 AM, Wednesday, July 7, 1976 for formal investigation to develop the facts and place your responsibility, if any, in connection with the removal of merchandise from Container No. MOLU 290988 on Car TTAX 974353 located on the Rip Runner Track directly adjacent to Mechanical Building Lunch Room at or about 11:50 PM June 30, 1976."

As a result of the investigation, which concluded on August 17, 1976, Carrier determined that Claimant had responsibility and on August 20, 1976, he was advised:

"The investigation developed that you were apprehended with merchandise in your position and that you did give a written statement admitting your guilt in this matter and naming other employees that were involved.

This is to advise that effective this date, your personal record is assessed with dismissal for the above stated reasons."

This is a companion claim to that in Docket 7622 which resulted in this Board's Award No. 7918. The Board finds that Claimant was accorded all the procedural rights set forth in Rule 19 of the applicable Agreement. Claimant was given proper notice, he was represented, he elected not to call any witnesses and he did participate in the investigation by answering questions, making statements and questioning witnesses both personally and through his representative.

The Board finds that sufficient competent evidence was adduced to support Carrier's conclusion as to Claimant's culpability. Here, Claimant on the night of June 30, 1976 was observed in the act of participating in the theft of merchandise from a container car which had been entrusted to his employer for shipment. A search of his automobile, in the presence of witnesses, disclosed the box that Claimant had been observed placing in the trunk of his car. Later, Claimant voluntarily gave a written statement, witnessed by police officers, which implicated employees other than the Caboose Supply Man, who had been previously observed in the act of passing boxes down to Claimant. Despite efforts by Claimant to recant his written statement the record is sufficient to support the conclusions reached by Carrier.

This Board will not substitute its judgment for that of Carrier where, as here, sufficient evidence was adduced to support the conclusion that the offense with which Claimant was charged was in fact committed. Claimant's act of participating in the theft of goods entrusted to his employer strikes a blow at the stability of the Company and the security of his fellow employees. His dishonest act weakens the confidence that the shippers must

hold in Carrier's ability to safely deliver merchandise entrusted to it. It likewise strikes at a fundamental basis of the employer-employee relationship, to wit - honesty. We find that the discipline of dismissal to be not excessive or unreasonable. In such circumstances this claim will be denied. In view of these findings the Board merely notes that Part II of the Claim has no foundation and authority in the Agreement. Thus, the Board would otherwise have no authority to pass on the specified items in Part II of the Statement of Claim.

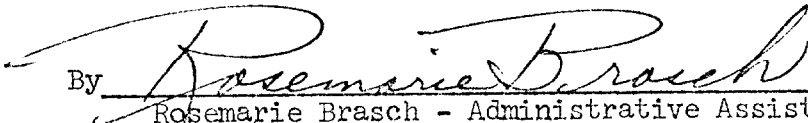
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of May, 1979.