

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { System Federation No. 99, Railway Employees'  
 { Department, A. F. of L. - C. I. O.  
 { (Carmen)  
 { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carman K. L. Roberson and Lead Carman, R. W. Wicksell, were unjustly dismissed from service of the Illinois Central Gulf Railroad on December 15, 1977.
2. That accordingly the Illinois Central Gulf Railroad be ordered to reinstate Carman K. L. Roberson and Lead Carman R. W. Wicksell to service with seniority unimpaired, be paid for all time lost, and any and all other benefits they would be entitled as a condition of employment, plus six percent (6%) interest on wages.

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.

Claimants Roberson and Wicksell, carmen in carrier's Mays Yard in New Orleans, Louisiana, were dismissed from service for attempting to steal ten new Good Year tires, which were part of an interstate shipment. They were observed transferring the tires from a company truck to the personal car of claimant Wicksell. The eye witness to this transfer reported it to carrier's special agent, Fauchaux. Investigation by the special agent uncovered the tires in claimant's car, parked on company property. Claimants Roberson and Wicksell were subsequently cited for formal investigation to determine whether they were guilty. At the conclusion of the hearing, carrier dismissed both men. The organization protests carrier's actions, alleging that claimants were not guilty. It claims that they were framed and that they did not receive a fair and impartial investigation.

From the record before it, this Board sees no facts that support the organization's position. Claimants Wicksell and Roberson did load ten tires into Wicksell's private car. Investigators did discover these tires in the car. At the hearing, claimants could not explain away these facts. Claimant Wicksell argued that he intended to turn the tires into the office. No one would listen to him, however. Further, the office was locked, since it was Sunday.

Carrier gave no credence to the contention that claimant intended to turn the tires into the office, nor does the record support such a claim. Carrier concluded that claimants intended to steal the ten tires. From a review of the records, this Board concludes that carrier's decision was based on substantial evidence. We see no reason to believe otherwise.

We cannot support the organization's contention that carrier framed claimants, nor can we believe that claimants did not receive a full and fair hearing. Claimants and their representatives had every opportunity to call witnesses and to examine and cross-examine them at the hearing. There is substantial evidence in the record before us to support the charges levied by carrier. There is no evidence to show that dismissal of claimants was arbitrary or capricious. Consequently, the claim must be denied.

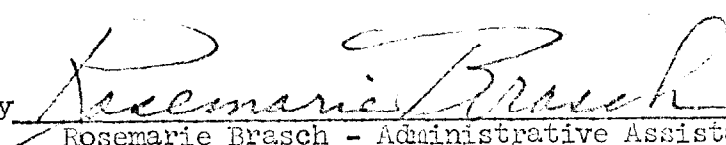
A W A R D

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 24th day of October, 1979.