

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: ( System Federation No. 1, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
( Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That, in violation of the current agreement, Firemen and Oiler E. P. Gomez, 51st Street Diesel Pad, Consolidated Rail Corporation, Chicago, Illinois, was unjustly suspended and dismissed from service of the Carrier following hearing held on January 27, 1978.
2. That, accordingly, the Carrier be ordered to make the aforementioned E. P. Gomez whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holidays, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for all lost wages and, in addition, the amount of 6% annual interest on such lost 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 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, a laborer, in the employ of the carrier for 19 years was charged with the unauthorized possession, signing and cashing of a carrier payroll check made payable to a fellow employe in 1977. Claimant was suspended from service on January 23, 1978 pending a trial which was duly held on January 27, 1978. On February 21, 1978, Claimant was discharged.

The underlying facts are undisputed. Claimant obtained possession of a carrier payroll draft made payable to a fellow employe. At a currency exchange, the claimant endorsed the check by forging the signature of his fellow employe. In exchange for the check, the claimant received a money order made payable to the fellow employe. The claimant altered the payee's name on the money order to his own name. The Claimant admitted to these facts at the hearing on January 27, 1978 as stated at page 3 of Employees' Exhibit B:

"Q. Do you admit to signing and cashing this payroll check?"

"A. (Claimant) Yes, I went down to the currency exchange signed the check and he ... gave me the money."

The organization first contends that the carrier improperly suspended the claimant pending a hearing under discipline Rule 20(b). Rule 20(b) provides for the suspension of an employe before an investigation where the company suspects that the employe committed a major offense. The organization argues that the claimant never jeopardized the health and safety of other employes so the Claimant is presumptively not guilty of a major violation. We do not agree with this position. There are many types of misconduct which constitute a major offense and the endangerment of other workers is not an essential prerequisite. The claimant was stealing money from his employer and a fellow employe. Theft by deception is a grave offense justifying suspension before the investigation.

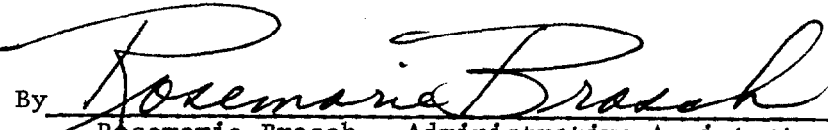
The Organization asserts the penalty of discharge is excessive and arbitrary, especially in light of the Claimant's years of service. We do not agree. The offense was serious; guilt was proven by the Carrier, even admitted to by the Claimant. We may not substitute our judgement for that of the Carrier in situations of this type. The claim must be and is denied.

A W A R D

Claim is 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 21st day of August, 1980.