

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

Parties to Dispute: { System Federation No. 121, Railway Employees'  
                                  { Department, A. F. of L. - C. I. O.  
                                  { (Carmen)  
                                  { Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Texas and Pacific Railway Company violated Rule 24 of the controlling agreement when they unjustly dismissed Carman G. L. Buck from their service on September 15, 1977, following investigation held on September 12, 1977.
2. That accordingly The Texas and Pacific Railway Company be ordered to reinstate Carman G. L. Buck to service and compensate him as follows beginning September 3, 1977:
  - a. Compensate him in the amount of five (5) days per week at pro rata rate until returned to service;
  - b. Return him to service with seniority rights unimpaired;
  - c. Make him whole for all health and welfare and insurance benefits;
  - d. Make him whole for pension benefits including Railroad Retirement and Unemployment Insurance;
  - e. Make him whole for any other benefits he would have earned during the time he was 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 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.

The essential facts in this case are undisputed. Claimant was suspended from service on September 4, 1977 pending the outcome of an investigation scheduled on September 12, 1977. He was employed, prior to his dismissal as a carman, at Carrier's Mechanical Facility at Dallas, Texas and worked as a vacation relief man at the Fort Worth Freight Car Repair Track.

The purpose of the investigation was to develop the facts relative to his alleged unauthorized possession of the following items:

- A. ten (10) new cross ties
- B. three (3) 55 gallon barrels of diesel fuel
- C. One (1) oxygen and acetylene regulator and guage set
- D. fifty (50) feet of dual hose and fittings

On September 15, 1977, Claimant was informed by letter that he was dismissed from service for violating Safety Rules B and N, which Carrier noted was substantiated by his self admission at the hearing, that he had in his possession the aforesaid items and his correlative statement that he intended to remove them from Carrier's property.

Claimant contends that the investigation was prejudicial since he was not apprised of the precise nature of the charges and Carrier improperly injected insinuating remarks at the hearing that he was on drugs and under the influence of liquor. He argues that the acting investigating officer and the presiding investigating officer's role in the investigation were inconsistent with due process standards, since the former official served the notice of investigation, while the latter official conducted the investigation and issued the September 15, 1977 dismissal penalty. He acknowledges that he had these items in his possession, but avers that it was his intention to return all of them with the exception of the fuel oil.

Carrier, contrawise, disputes these contentions and asserts that the record unequivocally affirms the charged specifications. It argues that the investigative notice detailed the precise items that were found in his possession, thus permitting him the opportunity to prepare an intelligent and forceful defense. It contends that he admitted at the hearing of being in possession of these items and testified at the close of the hearing that he was "afforded the opportunity to make a full statement and to produce evidence". It argues that the evidence, including the testimony of four (4) witnesses and Claimant's own admission demonstrates that he was dishonest, contrary to Safety Rules B and N.

In our review of the case, we agree with Carrier that the investigative trial was conducted in a fair and impartial manner and that Claimant was permitted every reasonable opportunity to refute the charges. In fact, he stated so at the hearing. He admitted that he was in possession of these items and that it was his intent to remove them from Carrier's property. He was not charged with drug or alcoholic usage or found guilty of such offenses. He was found guilty of dishonesty. The hearing officer did not act as a witness or administer the investigative hearing in a prejudicial manner, but submitted the final transcript to the Master Mechanic for review and recommendations. It was the latter official who advised that dismissal was justified.

When the investigative record is carefully considered we find that he violated Safety Rules B and N. We recognize, of course, that he was a long term employee, but we have to counterbalance judicially this aspect of the record with the seriousness of the charges. The Grievant was found with these items impermissibly in his possession and he stated that he intended to remove them from the property. Whether he would have returned them in whole or in part, is too problematical to contemplate. The simple fact of the matter is that he should not have taken them in the first place. In a previous case, involving the same organization and the same carrier, we upheld the penalty of dismissal where a long term employee was found guilty of theft. (See Second Division Award 7103). This holding is on point with our findings herein and the judicial thrust of our prior decisions and we are compelled by the force and clarity of the record to support Carrier's determination. (See, for example, Second Division Awards 6525, 6368, 6214 and 4744). Claimant was inexcusably dishonest and such deportment cannot be countenanced in this vital industry. We will deny the 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 21st day of August, 1980.