

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the controlling agreement Laborer, Rickie L. Clutter, was unjustly dismissed from the service of the Missouri Pacific Railroad Company on November 28, 1977.
2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer, Rickie L. Clutter, at the pro rata rate of pay for each work day beginning November 10, 1977, until he is reinstated to service and in addition to receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Laborer, Rickie L. Clutter, for his actual loss of payment of insurance on his dependents and hospital benefits for himself, and he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Clutter an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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.

This is an appeal of disciplinary termination for

"Violation of General Rule N. Items 3 and 6, of the Uniform Code of Safety Rules, and falsification of time cards dated November 9 and November 10, 1977."

Items 3 and 6 read as follows:

"Employes must not be:

"3. Insubordinate

6. Quarrelsome or otherwise vicious."

Formal investigation was held in Kansas City on November 22, 1977, to investigate Claimant's possible culpability as indicated above. Mr. Clutter did not attend such investigation although he was given verbal notice and refused written notice. General Car Foreman L. N. Goxvener testified as follows:

"At approximately 6:30 p.m. on November 10, 1977, I called the Car Foreman Lalla up at the 400 Yard Shanty to get some facts about the yard service up there. At this time I asked him if Laborer Clutter was in there and he informed me that he was and I asked him to let me talk to him on the phone at which time Clutter got on the phone. I told him that I had had reports that he wasn't properly performing his duties as caboose supplyman. At this time he asked me why I didn't do something about it. I told him that was my purpose for talking to him on the phone that the reports I had had, his work was not being performed as it should be. I told him that I had even checked behind him and that I had found cabooses not properly supplied. At this time he said, 'you're a liar'. I asked him to repeat the same statement and he hung the telephone up. I immediately dialed the number again, Car Foreman Lalla answered. I asked Mr. Lalla if he heard the statement that Clutter had made; he informed me that he did. I asked him if Clutter had hung the phone up; he said he did. At this time I got Mr. Chandler, Assistant General Foreman, and we went up to the 400 Yard Shanty arriving about 6:35 or 6:40. Mr. Clutter was not in the shanty when we arrived. We waited until approximately 6:55 p.m. Mr. Clutter arrived at the shanty. I asked him to come inside which he did. At this time my statements were to him 'you know you called me a liar on the phone, you also hung the phone up on me, would you repeat that again.' His statements were, 'I want a representative here'. He was informed he did not need a representative. His statements were, 'I'm not going to say a word at this time.' I informed Mr. Clutter he was out of service for insubordination. He went to his locker, got his time card cut, asked me if I was going to change his time card. I informed him that the General Foreman did not change an employee's time card--only the employee himself can change it. His time card was turned in for November 10, 1977, which he is showing 8 hours showing his time in at 3:00 and out at 11:00. He was removed from service at 7:00 p.m. Also, he turned in a time card for November 9 showing 8 hours of time 5 which is miscellaneous time paid for not worked. At the bottom of the time card written in handwriting it shows, 'account of stolen clothes', signed R. L. Clutter."

Claimant's culpability was supported by other witnesses. The Organization, in face of clearly incriminating evidence, relies on its claim of procedural error in that Claimant denies receipt of written notice of investigation as required by the Agreement. Such claim must be rejected because Claimant had actual notice and refused written notice.

We find that the investigation was fairly and properly conducted and that the discipline was reasonable.

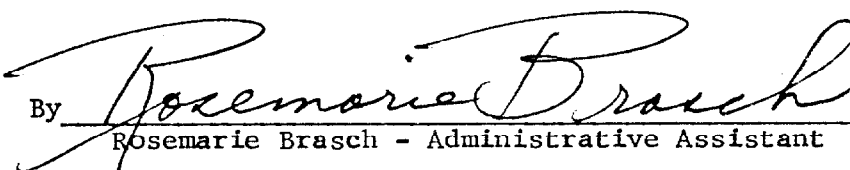
A W A R D

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 14th day of January, 1981.