

The Second Division consisted of the regular members and in addition Referee M. D. Lyden when award was rendered.

Parties to Dispute: (International Association of Machinists and
 (Aerospace Workers
 (Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Carrier improperly suspended Machinist J. W. Telphy (hereinafter referred to as Claimant) from service on May 17, 1978, and subsequently dismissed him on June 19, 1978.
2. That Carrier be ordered to compensate Claimant for all wage loss from May 17, 1978, to date of restoration to service on December 3, 1978.

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 rules of evidence and proof are very clear in arbitration matters. The burden of proof to prove innocence and/or guilt is the responsibility, respective of organization, with the employee in question as well as the Carrier. The identified members of the Carrier alleged that Mr. J. W. Telphy was holding a can in his hand assumed to be an alcoholic beverage (clerk Blackford, Foreman Dunn, Supervisor Garcia), although in testimony, members of management in fact did not examine the contents of the bag. Likewise, it is the responsibility of the employee and the organization to vindicate himself from the alleged charges. This could have been done very easily, had Mr. Telphy opened the bag for examination; removing contents himself in front of six witnesses or in subsequent meetings. The Carrier's leniency is well noted. Claim of Employee denied.

A W A R D

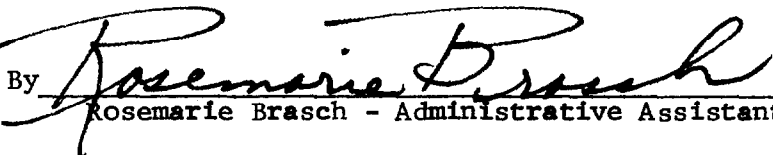
Claim denied.

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Award No. 8687
Docket No. 8293
2-SPT-MA-'81

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 29th day of April, 1981.