

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 8748  
Docket No. 8817  
2-SPT-CM-'81

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement, Carmen K. Din, G. W. Winters, R. Venegas, A. C. Williams, and T. B. Erickson were unjustly deprived of their rights and compensation when they were improperly dismissed from service on March 19 and 22, 1979, as a result of investigations held on March 12, and 16, 1979.
2. That accordingly, the Southern Pacific Transportation Company be ordered to reinstate Carmen K. Din, G. W. Winters, R. Venegas, A. C. Williams, and T. B. Erickson to service at Roseville, California in accordance with the provisions of Rule 39, with compensation for all time lost, and that they be made whole for all vacation rights, pension benefits including Railroad Retirement and Unemployment Insurance, and any other benefits they would have earned during the time 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.

After formal investigation each of the claimants was discharged for violation of that portion of General Rule 801 reading:

"Employees will not be retained in the service who are ... dishonest..."

The claimants each admitted that they had committed theft of Company property. Each of them was convicted in U. S. District Court of theft of interstate shipments. There is no question of sufficiency of the evidence. This appeal is grounded on the Organization's contention that the claimants were disciplined in violation of the Agreement in view of the fact that the investigation was held approximately one year after the incidents occurred for which Claimants were disciplined. However, the record reflects that for nearly a year the FBI, with the cooperation of Southern Pacific law officers, conducted a wide-ranging investigation designed to halt numerous thefts from interstate shipments. Such investigation was not concluded

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until early March of 1979, although there was some publicity before such time. On the whole record, we conclude that Claimants were fairly and properly handled.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of August, 1981.