

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That as a result of an investigation Friday, February 23, 1979 Carman Patrick Tantillo was dismissed from the service of the Belt Railway Company of Chicago effective February 26, 1979. Said dismissal of Carman Tantillo is arbitrary, vagarious, unfair, unjust, unreasonable and in violation of Rule 20 of the current working Agreement.
2. That the Belt Railway Company of Chicago be ordered to reinstate Carman Patrick Tantillo to their services with seniority, vacation and all other rights unimpaired and to compensate him for all time lost commencing February 20, 1979 and continuing until such reinstatement is in effect.
3. That the Belt Railway Company of Chicago be ordered to pay Carman Patrick Tantillo for all losses, if any, suffered account of loss of coverage under the agreements pertaining to Dental, Hospital, Surgical and Medical Insurance Plans for all time held out of service.
4. That the Belt Railway Company of Chicago be ordered to pay the premium on the Group Life Insurance Plan for Carman Patrick Tantillo for all time that he is held out of service. In addition to the money amounts claimed herein, the Belt Railway Company of Chicago shall pay Carman Patrick Tantillo an additional amount of 6% per annum compounded annually on the anniversary date of 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.

Claimant held a regular assignment as Car Inspector in Carrier's Clearing Yard, Chicago, Illinois, with hours 3:00 P.M. to 11:00 P.M.

The Carrier contends that a Lieutenant of Police was watching employe activities in and around a Car Department Building, which is known as No. 208 Shanty, from a

distance of about 150 feet; that about 10:30 P.M. the Lieutenant observed claimant remove two plain brown cartons, approximately 20 inches long and 12 inches wide, from an ice box located in the back of the shanty and place the cartons in the trunk of a tan Ford Granada with no license plates. The Lieutenant continued surveillance of the area until 10:45 P.M., when the Car Foreman arrived at the No. 208 shanty.

The Lieutenant requested the supervisor to find out who owned the tan Ford. The claimant acknowledged that the tan Ford was his vehicle, but when the Car Foreman instructed him to open the trunk of the car, he refused to do so. The Lieutenant also instructed the claimant to open the trunk and again he refused to do so, stating that the cartons he placed in the trunk contained his boots.

On February 18, 1979, claimant was suspended from service. On February 20, 1979, claimant was ordered to report for formal investigation on February 23, 1979:

"This will notify you that you are being withheld from service pending an investigation to be held at 10:00 a.m., on Friday, February 23, 1979, in the office of the Superintendent, Car Department, to determine the facts and your responsibility, if any, surrounding the incident that occurred at approximately 10:30 p.m. on February 17, 1979, in and around the Car Inspectors Building immediately east of Cicero Avenue in the East Yard, wherein you were observed to conceal property in the trunk of your automobile, and when confronted concerning the matter you insubordinately refused to follow the instructions of duly authorized authorities in the investigation of this incident."

The charge met the requirement of the Agreement. It is well settled that disciplinary proceedings are not criminal proceedings and that strict rules of evidence do not apply.

In the investigation a patrolman testified that at about 11:30 P.M. on the night involved, a car was found in the receiving yard with trailer door open; that the load contained electric parts in cartons 12 by 20 inches, and that approximately five cartons were missing from the top of the load, and two of the cartons were recovered on the bed of the trailer underneath the wheels.

The Lieutenant of Police, who it was reported saw the claimant place two cartons in the trunk of his car, testified at length in the investigation to the effect that claimant refused to open the trunk of his car without a search warrant.

Car Foreman Smith testified that he instructed the claimant to open his trunk, with the same result, claimant refused to do so without a search warrant. He also testified that he instructed the claimant to remain at the shanty after 11:00 p.m., the regular quitting time for the shift, but claimant did not do so and departed when the other employes did.

In the investigation, the claimant admitted that he refused to open the trunk of his car. The record does not show that a search warrant was ever obtained to search the trunk of claimant's car.

While the suspicion surrounding Claimant's unusual activity could have been easily resolved by the Claimant, complying with the request of his foreman, there was no requirement, under these facts, for the Claimant doing so. The Carrier had other means available to it to resolve this matter but did not make use of them.

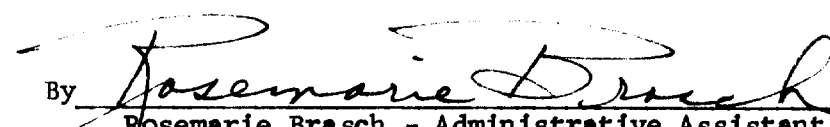
It appears from the Carrier's submission that claimant was disciplined for insubordination for not complying with the instructions of the Car Foreman to remain at the shanty beyond 11:00 P.M. The Board finds that discipline for this offense was justified; however, under the circumstances, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service. Items 3 and 4 of the asserted claim are denied as being without contractual support.

A W A R D

Claim sustained to the extent indicated in the Findings.

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 2nd day of September, 1981.