

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers  
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Firemen & Oiler John J. Carras was unjustly suspended and dismissed from service of the Carrier on January 4, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned John J. Carras whole by reinstating him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been 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.

In this dispute, Claimant was charged with two separate offenses and was afforded two separate investigations on October 30, 1978 and December 6, 1978, respectively.

On October 30, 1978, an investigation was held to determine whether he used forged meal tickets on July 4, 11, 15, 16, 20, 24, 28, August 5, 13, 20 and September 30, 1978 which resulted in his apprehension by the Consolidated Rail Corporation police on October 5, 1978.

On December 6, 1978, an investigation was held to determine his involvement, when on September 17, 1978 at approximately 11:30 A.M. meal tickets were unlawfully removed from the General Foreman's office at Selkirk Fueling Station. Claimant was apprised by certified letter, dated October 10, 1978, that he was being held out of service, pending the disposition of the second specification and was formally notified on January 2 and again on January 4, 1979 that he was found

guilty of the aforementioned offenses and dismissed from service. He was issued two separate dismissals.

In defense of his position, Claimant contends that his dismissal was arbitrary and capricious, since it was primarily based upon hearsay and secondary sources. He argues that he was never charged or convicted of any crime in a civil court in connection with the asserted charges.

Carrier contends that the testimony of Special Investigator, Robert Daucher and the voluntary notarized statements of four of his fellow employees, attesting to his wilfull complicity, clearly establishes his unauthorized use of meal tickets on the dates delineated in the notice of discipline. Moreover, it asserts that the signed statements of Laborer, John G. Wider, Jr. on October 7, 1978 detailing the pilfering of blank meal tickets from the desk of the General Foreman's office at Selkirk Fueling station on September 17, 1978 and Claimant's subsequent coercive behavior toward him, pointedly demonstrates his culpability. It notes that he was put on probation by the Town of Coeymans Court for a period of six months because of his plea in connection with this matter and this explicit acknowledgement confirms his guilt.

In our review of this case, we concur with Carrier's position. Careful analysis of the investigative record, particularly the unrebutted testimony of the Special Investigator, the notarized statements of Claimants' co-workers and Claimant's plea in the Town of Coeymans Court persuasively corroborates his guilt. Claimant denied the charges but did not prove that he was innocent. The record shows that he impermissibly used meal tickets on July 4, 11, 15, 16, 20, 24, 28, August 5, 13, 20 and September 30, 1978 and unlawfully removed meal tickets from the desk of the General Foreman on September 17, 1978. He was dismissed from service twice for these two separate charges and his dismissal was predicated upon a record of substantial probative evidence. In a companion case involving one of the aforementioned co-workers, Electrician Gerald E. Houk, this Board found him guilty of forging and misusing meal tickets by virtue of his own admission. (See Second Division Award No. 8770). In the instant case, Claimant denies the charges, but the evidence unmistakably points to a contrary conclusion. 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 27th day of January, 1982.