

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

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under current agreement the Consolidated Rail Corporation unjustly dismissed electrician Stanley Zelaskowski from service effective July 6, 1979.
2. That accordingly carrier be ordered to restore Electrician Stanley Zelaskowski to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable electrician rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the above mentioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the above mentioned period; and all other benefits that would normally have accrued to him had he been working in the above mentioned period in order to make him whole.

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.

On June 11, 1979, the Claimant, an electrician, whose service seniority date is June 28, 1967, was found by a Policeman and General Car Foreman to have two Conrail P.A. Speakers in his personal automobile. After investigation on June 20, 1979, the Claimant was found guilty of theft. He was allowed to stay on the job from June 11, 1979 until July 6, 1979 when he was dismissed from all services. The Claimant, in a letter dated July 17, 1979, stated that, in view of his twelve years of service, and in view of the fact that he immediately offered to return the Speakers, his dismissal was an excessive form of discipline. An appeal hearing was held at which the Carrier found no justification for extending leniency and denied a reinstatement.

The Claimant's contention that he did not intend to commit a wrongful act and that he believed that the Speakers were scrap which Carrier no longer had any use for is rendered unpersuasive by Claimant's admissions at the investigation. Claimant testified that he did not have any authority to remove those Speakers and put them in his automobile. He also stated that the Speakers were laying in the MoDock and when cars are stripped in the MoDock ... "we save all the material we can". It is reasonable to believe that the Carrier would not strip cars in order to salvage material so that employees, without authority, could remove said salvagable material for their own use.

The Claimant's allegation that the investigation was unfairly conducted is overshadowed by such clear evidence to the effect that he took the Speakers without authorization. The Claimant also acknowledged, at the investigation, that it was conducted in a fair manner.

Though it is clear that the Claimant took the Speakers without authorization it is also true that he made no attempt to conceal them. Claimant had to first repair them before they could be used and then they were easily viewed inside his automobile which he drove to work, on the property, each day. Also the Claimant was fully cooperative as he quickly admitted to having taken the Speakers, offered to immediately return them and actually did return them on the same day he was confronted about them. Additionally, it seems as though the Carrier regarded this incident as relatively non-threatening to its interests since when he admitted he had unauthorizedly taken the Speakers Claimant was not held out of service, pending investigation. Instead he was allowed to remain on the job from the day he admitted to having taken the Speakers (June 11, 1979) until the day he was actually discharged, (July 6, 1979). If Carrier truly felt Claimant was a threat to steal further it would not have allowed him to continue working on the property during this period.

This Board has consistently stated in awards that stealing from Carriers, regardless of the value of the stolen property, is grounds for discharge. We have been reluctant to substitute our judgment for the judgment of the Carrier in such cases and have avoided reinstating discharged employees who have been found guilty of theft. We have, however, on some occasions, reversed a Carrier's actions if we thought the discipline imposed was unreasonably excessive or the discipline, had by the time of our deliberations, served its purpose. (See Award No. 8066; Second Division.)

In the instant case, it would seem that the detriment already experienced by Claimant sufficiently measures his offense. The Claimant was a twelve year employee with only two unrelated infractions on his record. His honest and cooperative manner, when questioned about the Speakers, also persuades this Board that he should have one last chance to return to employment and become a productive and exemplary employee. Claimant must be made aware that if he is involved in any further like incidents his discharge would be imminent. This Board would doubtless deny a further chance to return to work.

Form 1
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Award No. 8887
Docket No. 8848
2-CR-EW-'82

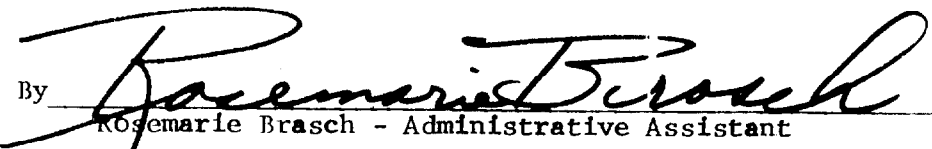
A W A R D

Claimant is returned to service without any back wages or adjustment for lost benefits.

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.