Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8934
Docket No. 8837
2-MC-CM-'82

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

Parties to Dispute: Brotherhood Railway Carmen of the United States and Canada

Monongahela Connecting Railroad Company

Dispute: Claim of Employes:

No. 1. That under the controlling Agreement, the Carrier improperly dismissed Carman-Mechanic C. W. Davis, from the service of the Carrier, under letter dated September 4, 1979, after investigation held on August 29, 1979.

No. 2. That accordingly, the Carrier be ordered to restore Carman C. W. Davis to service with vacation and seniority rights unimpaired and be made whole for all losses including compensation for all time arising out of this dispute.

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.

In this case Claimant was alleged to have reported doing repair work on cars, during his 3:00 P.M. - 11:00 P.M. shifts on August 9 and August 10, 1979, which he did not actually perform. His alleged fraudulent reporting respecting having made such repairs was asserted to have violated Rule C. ("Company will not knowlingly employ anyone not of good character ... employees who are dishonest will not be retained in the service of the Company"), and Rule U. ("The following are prohibited while on duty ... the performance of illegal acts...") Pursuant to the results of an investigative hearing held on August 29, 1979 Claimant was dismissed from service on September 4, 1979.

The facts in this matter were developed when, in the course of making the type of routine inspection he had often conducted on his day off, the General Supervisor noticed that threads of a hand brake bolt had been recently burned with a torch. Such characteristic, generally, is an indication that a brake wheel had been replaced. But this supervisor observed that the wheel had not been replaced and that the brake was badly in need of adjustment. Thus, in view of the fact that it seemed as though no work had been done on the hand brake,

the General Supervisor was set to wondering whether the bolts had been burned to create the misleading appearance that the brake had been repaired.

The General Supervisor testified that he then consulted Claimant's work repair form regarding the car in question and found that Claimant had reported that he had made certain repairs on such cars and had put on new parts. However, the supervisor's check of the car in question, he testified, revealed that such repairs had not been made and such new parts not affixed. Even the repair the car had been "shopped' for had not been accomplished. These findings were substantiated by investigations, of the car, which the General Supervisor requested two other Foreman make. The General Supervisor then consulted other work report cards filed by Claimant and, upon investigation, found that repairs listed thereon as having been made had not, in fact, been done. The General Supervisor requested two union representatives to investigate respecting such alleged repairs and their findings corroborated his own - that the listed repairs had not been made. There are also photographs which allegedly verify the fact that some of the work Claimant reported he did could not possible have been physically performed because of the very physical nature of property on which such work was reported as having been done. Additionally, a letter from an independent consultant confirms that Claimant misreported various repairs.

In any event, Claimant conclusively admitted, at the invesitgative hearing, that the work reports he had filed on August 9th and 10th were fallacious. At page 11 of the investigative transcript he states:

> "I did it for the simple fact that ... I just don't know. I wasn't really feeling too well you know. I have problems at home and just the simple fact that the more that you write up the more you lie about what you did on the cards - the more that you get paid."

The Car Department employees participate in a Wage Incentive Program which provides substantial earning opportunities over and above regular hourly rates of pay. The Carrier asserts that when Claimant falsely noted various repairs he was defrauding the Carrier of the funds which would have, been disbursed to him as incentive payments in compensation for such repairs. The Carrier further points out that Claimant's attempts to gain compensation for work which he did not actually perform had various other untoward implications and possible ramifications. Because of misbilling for repairs which Claimant's actions would have induced, the Carrier to commit, and the procedures of the American Association of Railroads on such matters, the Federal Government, it is alleged, might have been misbilled for such charges, the Carrier itself might have been subjected to severe fines and penalties, other railroads whose cars were purportedly repaired, according to Claimant's misrepresentations, might have reacted extremely adversely to misbillings by this Carrier and have 'black balled" it in the future, parties responsible for damage, (including, Jones and Laughlin Steel, by far, Carrier's most important customer) purportedly but not actually, repaired by Claimant could have been billed for such "non-repairs", and safety hazards imperilling other employees could have been created.

The Claimant asserted that while he knew it was "wrong" to enter on the repair forms, notations respecting work he'd not actually performed, he did not know that by reporting work on foreign cars is illegal or that he could be subject to discipline for such acts. He claimed, further that "everyone else does it" and that in cases where a Foreman realizes a Carman noted a repair not actually performed the normal procedure is to bring the forms back to the employee and advise that the employee either remove such notation from the form or perform the work to which it refers. Thus, Claimant asserts the disciplinary action taken against him in this matter represents discriminatory treatment vis a vis other employees performing similar work. The Claimant also refers to adverse discriminatory treatment in that the Helper who worked with him when the allegedly falsely reported repairs were made, and on whose behalf the forms noting these repairs were also filed, was assessed but a thirty day suspension in this matter while Claimant was dismissed.

Taking up the latter point first, it should be noted that there is evidence in the record to the effect that Claimant's Helper had no actual participation in completing the false work reports that are at the heart of this case. While he may have known what Claimant was doing there is no evidence that he instigated the composition of the bogus reports or assisted in their formulation. Indeed, the Claimant himself admits that his Helper did not actually take part in making up the false work reports. There is also testimony, in the record of the investigative hearing, indicating that the Helper was not very aware of the information the false reports contained and that he really does not understand some of the things that go on the work report sheets or how the latter should be filled out. The Helper also contended that he wasn't even aware, at the time the false reports in issue were filed, that the submission of such false reports would subject him to discipline.

Thus, as the just indicated factors demonstrate, whatever the association of Claimant's Helper with the filing of the false reports it was at a level much less direct than that occupied by Claimant in the matter. Consequently, the assessment of a penalty respecting the Helper which is more modest than that accorded Claimant in no way establishes that Claimant received discriminatory adverse treatment.

However, as pointed out, it is also asserted, on behalf of Claimant, that a "double standard" was applied to him in that other employees submit inaccurate work reports (in their own favor) but are not disciplined as Claimant was here. In other words, Claimant did only "what everybody else does" but was the only one penalized for it. In fact, contends Claimant, it is just because "everyone" enters tasks on their work report forms not in fact performed that Claimant believed he would not be subject to discipline for such falsification. He asserted that when a worker wrote up a job not performed, at worst, a Foreman who noticed that a discrepancy existed would return the sheet on which the erroneous entry was made and instruct the employee to, either actually complete the work indicated or remove such entry from the sheet.

In fact, the record does indicate that Carrier acknowledges that some misreporting by employees, in general, does occur. However, it insists, in effect, that such other misreporting as goes on is so different in degree from the type of false reporting indulged in by Claimant as to be different in kind. The

Organization argues that Claimant, based on Carrier's own admissions, is being dismissed for not knowing the difference between a little and too much, but Carrier seeks to point out, basically, that too much of the same thing may convert the latter into a quite different more serious thing.

The Carrier intimates that other misreporting which has gone on has been in the nature of minor errors or, at the most, pecadilloes. For example, the General Supervisor testified that sometimes employees will report having driven something like 220 rivets respecting a job as to which, in fact, only 200 rivets were driven. However, the job itself will unquestionably have been done. Similarly, testified the General Supervisor, sometimes workers will list having performed the component aspects of a job -- the various separate functions that went into completing the jobs as a unit -- as well as the jobs itself. In such cases the component functions are lined off the repair form so that employees are not compensated twice for the same work.

Certainly there is a difference between venial sins and grave ones even in a given category of sin. Human nature may be unable to resist cutting a corner, here and there, but that is very different than reporting that one went completely around the course when one did not traverse even any part of it. Consequently, since what Claimant admits having done, in the way of submitting false work reports, seems to involve such a greater magnitude of fraud than that in which the evidence shows any other employee to have been engaged disciplining Claimant vigorously, for his admitted fallocious reporting, does not amount to discriminating against him, unfairly, vis a vis, other employees.

This point is perhaps best established by the fact that an Organization representative at the investigative hearing, repudiated any suggestion that widespread and flagrant misreporting of repair work occurred amongst Claimant's co-workers. This representative acknowledged that employees may make slight errors in their own favor, in filling out their work cards. His example was the reporting of the fact that 210 rivets were driven when, in fact, only 200 may have been driven. However, his next words, addressed to Claimant, sharply indicate the wide gulf between what Claimant admits to having done in this case and the minor infractions which other employees may, from time to time, have committed:"... but ... making claims like you made ... No one lies to that extent ..."

As indicated above, organization asserts that Claimant is being penalized for not knowing the difference between a little and a lot of lying. But there is a difference and since Claimant was employed for almost two and one-half years it is fair to assume he knew the rules of Carmen's conduct and, therefore, that, in this context, the difference in degree between a little and a lot made, very definitely, be a difference in kind.

Carrier contends that Claimant sought to obtain monies to which he was not entitled, subjected his employer to the possibility of fines and his fellow employees to potential safety hazards. It is asserted that such conduct amounts to moral turpitude and Carrier vigorously takes the position, therefore, that an employee involved in such infractions may not be permitted to remain in its employ. To support this position Carrier presents strong authority.

For example in Award No. 4199, Second Division it was stated:

> "... we hold that the billing repair cards submitted by the Claimant ... contained a material and deliberate misrepresentation. They did not merely contain a minor and excusable error.
>
> ... (Claimant) committed a serious offense for which we fail to see any mitigating circumstances. He was discharged for just cause ..."

Also, in Award No. 3628, Second Division, involving a discharge the Board observed:

> "Three witnesses testified ... they ... found no evidence of the repairs Claimant said he had made...
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> .... We ... are of the opinion that the evidence produced was sufficient to sustain the Carrier's finding of guilt ... and we are unable to find that the Carrier acted without just and sufficient cause."

Finally, in Award No. 1756, Second Division, this Board commented on the graveness of the type of dishonest conduct in which Claimant, in the instant case, engaged:

> "... The offense committed by this Claimant consisted of obtaining ... pay by false pretenses. ... This involves moral turpitude. The Carrier has a right to expect its employees to be honest whether they are strictly supervised or not. For the Board to restore an employe's position after he has been apprehended in defrauding the Carrier is not justified..."

Thus, as can be seen, the Second Division has consistently validated dismissal as appropriate disciplinary action respecting the type of defrauding activity perpetrated by this Claimant.

Additionally, the discipline assessed here would seem proper in view of the fact that Claimant had been employed for less than two and one-half years at the time of his offense.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1982.