

The Second Division consisted of the regular members and in addition Referee Thomas V. Bender when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That under the current and controlling agreement, Laborer Eddie B. Taylor, was unjustly dismissed from service of the Seaboard Coast Line Railroad Company, on March 14, 1980, after a formal investigation was held in the office of Mr. T. P. King, Conducting Officer, on March 7, 1980.
2. That accordingly Eddie B. Taylor, Laborer, be restored to his regular assignment at Mulberry Yard with all seniority unimpaired, vacation, health and welfare, hospital and life insurance be paid and compensated for all lost time, effective March 3, 1980, date Mr. Taylor was removed from service, and the payment of 6% interest rate added thereto.

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.

Eddie B. Taylor is a laborer employed by the Carrier at its yard in Mulberry, Florida. Part of the Claimant's duties involve the fueling of engines. This is the part of the Claimant's duties which led to the events of February 23, 1980.

The facts show that the Claimant and a Clerk-Operator named Parker fueled Mate 3222 with 3020 gallons of diesel. This was accomplished at about 2:30 p.m. and the transaction was recorded on fuel ticket #30870. This ticket was signed by the Claimant and counter signed by Clerk-Operator Parker. Claimant separated from Parker and went to fuel Mate 3221 with Clerk Clement. Following this job fuel ticket #30851 was made out, and counter signed by both Claimant and Clerk Clement. The Claimant then asked Clement to sign a fuel ticket (#30850) covering fuel delivered to Mate 3222. Clement was told by Claimant that he and Parker had fueled the 3222 but had no pen. Without a pen no fuel ticket could be prepared. Clement signed the second ticket covering the fueling of Engine 3222. Clement accepted the Claimant's word for the fact that the fuel was delivered to the 3222. The value of the fuel reflected on the second Engine

3222 ticket was \$2,746.48.

The primary question is whether the Carrier presented sufficient evidence of the Claimant's guilt to sustain the charge and resulting discipline. The transcript of the hearing supplies abundant proof that Claimant falsified the fuel ticket (#30850) covering the fueling of Engine 3222.

This Division, has consistently held that a Carrier is well within its managerial right to terminate an employe for theft, stealing, pilferage, or whatever you elect to call actions of the nature involved herein. See generally Award No. 1850 (Second Division, Bailer); Award No. 6824 (Second Division, Eischen).

In this case the Board is faced with an employe with approximately 23 years of service. Undoubtedly, the Claimant has dedicated most of his working life to the Carrier. The temptation to reduce the severest of all discipline, dismissal is strong but this Referee is guided by the words of Referee David Dolnick, in Award No. 6615, a Second Division case, Mr. Dolnick wrote:

"It is indeed unfortunate that employees with 8 and 19 years of service should be dismissed. Employees with long years of efficient service generally receive consideration when the penalty is dismissal. But such a consideration applied where there may be some doubtful evidence and when the proof of guilt is on the border of 'substantial'. Here the evidence of guilt is more than 'substantial'. The only reason for reducing the penalty would be leniency, which this board may not entertain."

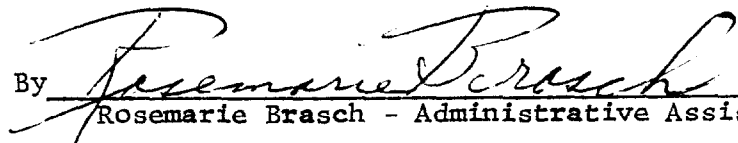
With this guidance, the result in this case must be to deny the grievance. The record substantially supports the conclusion that the Claimant forged the fuel ticket.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.