

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
(  
( Burlington Northern Railroad Company

Dispute: Claim of Employees:

- 1.) That the Carrier violated terms of the current agreement, particularly Rule 35, when Seattle Coach Cleaner, W. C. Nienow, was improperly and unjustly dismissed from service on November 22, 1978.
- 2.) That accordingly, the Burlington Northern, Inc., be required to return Coach Cleaner W. C. Nienow to active service and reimburse him for all wage loss during his suspension, restoration of all fringe benefits, including vacation, seniority, unimpaired, pass rights, made whole for all Health and Welfare and Life Insurance benefits, made whole for pension benefits, including Railroad Retirement and Unemployment insurance, and made whole for any other benefits that he would have earned during the time he was held out of service, commencing November 22, 1978 and continuing until properly restored to 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 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 October 5, 1978, Claimant reported for work and was asked by two special agents investigating theft of Amtrak Commissary items if he had ever taken anything from the area. He admitted he had consumed the Carrier's soft drinks and cigarettes on occasion. The agents then inspected the trunk of his car and found two cases of beer and a pipe wrench, all allegedly belonging to the Carrier. The beer was "loose pack" type (not sold in retail establishments) bearing code numbers only used on products sold to common carriers. The pipe wrench was marked with a "GN", indicating it was Carrier property by virtue of a merger with a predecessor railroad.

Although the Claimant argues that someone else must have put the above items in his trunk the record is clear that the trunk was locked when he opened it for the special agents. Furthermore, the code numbers on the beer corresponded to those on beer dispensed from the Amtrak Commissary. These facts and the overall record have led the Board to conclude that the Claimant violated Carrier rules which forbid dishonesty, withholding of information of any irregularity and theft, and/or unauthorized disposal of Carrier property.

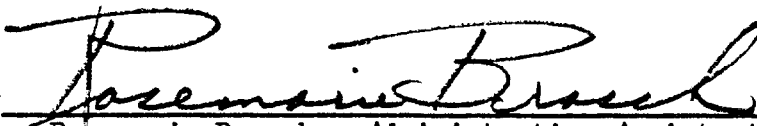
Having disposed of the matter on the merits, there is no need for the Board to address procedural questions.

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 22nd day of July, 1982.