

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That the action of National Railroad Passenger Corporation (Amtrak) was arbitrary, capricious and unjust when they dismissed electrician Joseph Onuszek from the service of the Carrier in all capacities on April 11, 1980.
2. That, accordingly the Carrier be ordered to reinstate electrician Joseph Onuszek to his former position with seniority rights unimpaired and compensated for all time lost.

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.

Claimant, Mr. Joseph Onuszek, entered service of the Carrier on August 1, 1977 and at the time of the instant case was employed as an electrician at the 12th Street Coach Yard, Chicago, Illinois. On March 7, 1980 Claimant was notified to attend an investigation on March 12, 1980. He was charged with violation of Carrier Rule of Conduct "I". This Rule states the following:

"I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will."

After postponement request by the Organization, and continuances, the investigation was held on March 21; March 24; and April 2, 1980. As a result of these hearings Claimant was notified on April 11, 1980 that he had been found guilty as charged by the Carrier and was dismissed from service as of that day. After all appeals were filed in a timely manner by the Organization with all Carrier officers authorized to hear such appeals this case is now before the National Railroad Adjustment Board.

Claimant was charged with alleged possession of stolen property in his van while it was parked on Carrier property on March 3, 1980. Alleged stolen items included 20 filled bags of Garden Magic potting soil, a filled bag of Milorgante, and quantities of Smucker's pancake syrup, grape jelly, mixed fruit jelly, Knott's Berry Farm Concord jelly, Gold'n Butter, Domino sugar, Sweet'n Low. Two witnesses at the hearing, both of them Carrier security officers, testified that Claimant admitted that he had taken the potting soil and the Milorgante from the Flor-Fill Company which was located near Carrier property, and that he had taken the various jellies and condiments from Carrier trains. During the hearing Claimant denied that he had stolen the materials from the Flor-Fill Company with the claim that he had bought the top soil and the Milorgante from a garden store prior to March 3, 1980 and he further denied that the jellies and condiments were in his truck at all.

It is well established by past Awards of this Board that in its appellate role it shall not resolve credibility questions (Second Division 6604 and 7144 inter alia). In the present instance this anomalous situation becomes less acute, in part, because of inconsistencies in the evidence alluded to by Claimant to support his position. For example, the dilemma of the different dates on the sales slip (2-29-80) and the cash register tape (3-04-80) from the garden store where Claimant purportedly bought the potting soil and the Milorgante, and the clerk's statement relating to this inconsistency could have been clarified by the Organization, since the hearing was continued on three different dates, but it did not do so. Nor was there any evidence presented to the effect that the Flor-Fill Company had returned the potting soil, etc. to the Claimant, since it was transferred from his van to this Company on March 3, 1980. Likewise, the Claimant offered no evidence, except to present the Board with a credibility dilemma, as this relates to the alleged presence of Carrier jellies and condiments in his van.

Thus a close analysis of the transcript(s) of the hearing(s) and supporting documents leads this Board to conclude that sufficient substantial evidence is present to warrant that Claimant is guilty as charged. Substantial evidence, in cases of this type, has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs. Labor Bd. 305 U.S. 197,229). The sole question to be resolved, therefore, in the instant case is whether Carrier sanction was reasonable.

This Board notes that although Claimant had not been convicted of any criminal offense by the date of the investigative hearing, this fact in itself is no bar to discipline by this Board in view of its own principle of substantial evidence (Second Division 6619; 7519; Third Division 13127; 22081). Furthermore, the National Railroad Adjustment Board has gone on record on numerous occasions to the effect that dishonesty merits dismissal, even if restitution is attempted (Third Division 23992; see also Second Division 6606 and 6824 inter alia). Given the facts of the instant case as presented to this Board it can only determine that the discipline assessed is not unjust, unreasonable nor arbitrary. It will not, therefore, disturb Carrier determination in this matter.

A W A R D

Claim denied.

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Award No. 9403
Docket No. 9327
2-NRPC-EW-'83

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 2nd day of March, 1983.