

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Missouri Pacific Railroad Company (C&EI)

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company (former Chicago and Eastern Illinois Railroad Company) violated the terms and conditions of the current Agreement, specifically Article V of the August 21, 1954 Agreement and Rule 30 when Superintendent, D. C. Packard, failed to notify the Organization, in writing, as to his reasons for declining the appeal. He also refused to meet with the Local Committee as requested by the Local Chairman.
2. That the Missouri Pacific Railroad Company further violated Rule 30 when, as a result of an investigation held on January 30, 1980, Carman B. Prince was dismissed from service, effective February 5, 1980. Said dismissal of Carman B. Prince is unfair and unjust as well as a violation of Rule 30 of the current working Agreement.
3. That the Missouri Pacific Railroad Company be ordered to reinstate Carman B. Prince to its service with seniority, vacation and all other rights unimpaired and compensated for all time lost until said reinstatement is in effect. Also, that the Railroad Company pay all premiums for insurance coverage (Hospital, Surgical, Medical and Dental) for all time held out of service.

In addition to the money amounts claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum, compounded annually on the anniversary date of claim.

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, a car inspector was charged with possessing merchandise stolen from the Carrier at 6:30 p.m. on January 4, 1980. The Carrier determined that

Claimant had committed the charged offense and dismissed Claimant from service on February 5, 1980.

The Organization urges us to summarily sustain this claim because it contends that the Carrier failed to properly deny the Organization's initial appeal. After reviewing the pertinent correspondence, we find that the Carrier's denial letter dated February 25, 1980 complied with Article V of the 1954 National Agreement.

At the investigation held on January 30, 1980, the Organization raised two significant objections. First, the Organization asserts that the notice of charges was vague and unclear. Second, the Organization claims the scope of the investigation went far beyond the facts underlying the alleged infraction as specified in the notice. We must overrule both objections. The notice of charges sufficiently described the nature of the alleged offense. Claimant and his representatives were duly apprised with the precise time and date that Claimant was purportedly observed with stolen goods. As to the second objection, the Carrier could properly introduce evidence in an effort to show the goods Claimant possessed were taken, without authority, from the Carrier's custody. Such evidence was inextricably tied to the specific reference in the notice of charges that Claimant possessed stolen merchandise.

At the investigation, a Carrier Special Agent gave a detailed account of an investigation he conducted to ascertain the cause of a series of thefts at Dalton Yard. On January 4, 1980, the Special Agent observed two persons load goods (which were in the Carrier's custody) onto a truck at Dalton Yard. He followed the truck to Claimant's home where he observed Claimant transfer the stolen items to another vehicle. Under the surveillance of other police officers, Claimant later drove the second vehicle to another residence where he began unloading the merchandise. At this point, the officers seized the stolen property. Though Claimant denied that he had possession of the stolen goods, the record contains substantial evidence that he committed the charged offense. Given the seriousness of Claimant's misconduct, the Carrier could reasonably impose a severe penalty.

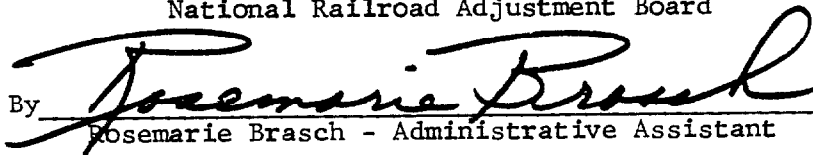
A W A R D

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 13th day of April, 1983.