

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Firemen and Oiler James Raquel, was unjustly suspended from the service of the Carrier, for 60 working days.
2. That accordingly, the Carrier be ordered to: To compensate the aforesaid employe for the 60 working days, that he was suspended, at the pro-rata rate of the position he held at the time he was suspended.

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.

This case involves the propriety of a 60 day suspension for violation of the rules in connection with the circumstances surrounding the return of a stolen Company radio, estimated value \$1400.

The walkie-talkie radio in question had been stolen from the Company some two and a half years prior to Claimant's involvement with it. He apparently came into possession of the radio in early December 1980 and made inquiries of an employe, M. Bozeman, in the radio shop as to its return and the possibility of a reward. In his initial contact with Mr. Bozeman, claimant indicated uncertainty as to Company ownership of the radio and Bozeman told him to bring it in. Bozeman also indicated that he did not think there would be a reward, but that he would check with his supervisor. Over the next 3 weeks claimant kept forgetting to bring in the radio.

Eventually Bozeman asked claimant how much he had invested in the radio and he reports that claimant told him \$50. Bozeman referred the matter to his supervisor (record is not clear whether he had made any prior inquiries of his supervisor, but indicates that management's actions were first initiated on December 19th, three weeks after claimant first talked to Bozeman). The Company quickly arranged to pay the money and observe the transaction. Claimant brought the radio in on Tuesday, December 23, 1980. Bozeman checked it over and identified

it from the serial number and Company initials on it as Company property, and handed claimant \$50. Special Agent Daniels then stepped out of concealment and claimant was subsequently removed from service and charged with possession and sale of Company property.

At the investigation it was shown that although he had inquired about a possible reward, and although he had told Bozeman he had \$50 in the radio, at the time he turned it over to Bozeman claimant made no mention of money nor asked for any. The money had simply been handed to him and he was immediately apprehended. The hearing officer therefore concluded that the evidence was insufficient to link claimant with the charge of attempting to sell stolen property, and the resulting suspension was based upon failure to inform his immediate supervisor as required by Rule 736 and improper possession of stolen Company property.

Organization strongly objects to use of the cited rule as the basis for discipline. It argues that the rule is not well-known to either employees or supervision, and that in any event claimant acted reasonably and properly under the circumstances and that his actions are not inconsistent with an innocent intent.

While Carrier is correct that claimant failed to report the existence of the radio to his immediate supervisor -- the procedure outlined in Rule 736 for stolen items found on the property -- when the item, which the employee knows or suspects to have been stolen from the Company, comes into his possession off the premises, it is perhaps understandable that the employee would approach the matter of returning it with some caution.

In the instant case radio shop employee Bozeman told claimant from the very first that he would check with his supervisor. Thus, even though claimant had not told his own supervisor about the radio, he had reason to believe that someone in authority was being made aware of it. Further Bozeman told him he should bring it in to the radio shop. Claimant had no reason to doubt this instruction, since that was obviously where it had come from.

At this point, however, we reach the crux of the problem -- the question of reward. Bozeman's failure to bring the matter to supervisory attention (or if he did, his supervisor's patience in letting it ride for several weeks) gave claimant ample opportunity to put the radio in Company hands before discussing the specifics of compensation or reward, and thereby avoid any suspicion that he was attempting to sell it back to the Company. His failure to take advantage of this opportunity plus the admission at the hearing that he had obtained the radio for five or six dollars and not the \$50 he told Bozeman he had in it, clearly suggest that claimant hoped to make something for his time and trouble in obtaining and returning the radio.

In the general scheme of things such an attitude may not seem unreasonable; however, the problem it poses for the Company is a difficult one. If the Company rewards its employees for the return of stolen Company property, such action might actually encourage theft for the purpose of collecting rewards. If, on the other hand, the Company does not respond affirmatively to inquiries with respect to rewards, the chances of recovering stolen property may be greatly diminished. Certainly claimant's forgetfulness before specific sums were discussed tends to suggest that the monetary inducement was necessary in this case to effect recovery.

We find that in view of the markings on the radio there could be little doubt that it was Company property. We further find that the evidence of contradictory statements as to the amount of money invested in the radio, in conjunction with failure to report it directly to management and failure to produce it prior to discussion of monetary reward, justify the conclusion that claimant's continued possession of the radio, after Bozeman initially asked him to bring it in, was improper. On the other hand the record shows that this particular radio was not the subject of a recent theft and there is no evidence that claimant had it in his possession any time prior to reporting it to Bozeman. Moreover, the fact that claimant did not actually demand compensation upon presentation of the radio cannot be ignored. Under all of these circumstances we find that a 60 day suspension is excessive. We will not interfere with the Carrier's determination that a suspension was the proper form of discipline, but under the circumstances, we find the length of suspension should be reduced to 30 days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June, 1983.