

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{ Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That, in violation of the current agreement, Laborer Paul E. Fisher was unjustly dismissed from service of the Carrier following trial held in absentia on April 25, 1980.
2. That, accordingly, the Carrier be ordered to make the aforementioned Paul E. Fisher whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of 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 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.

The Claimant, Mr. Paul E. Fisher, was employed as a Laborer-Fuel Truck Operator at the Carrier's Beacon Park Engine House, Allston, Massachusetts. On March 22, 1980, the Carrier sent a notice to Mr. Fisher that effective March 21, 1980, he was removed from service. On March 25, 1980, the Carrier sent a directive to Mr. Fisher instructing him to appear for a trial at South Station, Boston, Massachusetts, April 8, 1980; however, the trial was postponed at the request of the Claimant's representative, and rescheduled for April 25, 1980. The charge set forth in the March 25, 1980 directive was:

"In connection with the unauthorized removal and theft of company property when on Friday, March 21, 1980 you were apprehended by Conrail police at approximately 11:30 p.m. at 563 Arsenal Street, Watertown, Mass. for transferring #2 fuel oil to a privately owned truck from a company truck."

The trial was held as scheduled, and on May 16, 1980, Mr. Fisher was advised by the Carrier that he was immediately dismissed from Carrier service. The Organization's contention that the trial did not begin within thirty calendar days from the date Carrier has knowledge of involvement is rejected, since it was the Claimant's representative who requested the postponement under Rule 20(d). We have studied the transcript of the trial, the record of the handling of this matter on the property and the submissions of the parties before this Board, and we are compelled to find that substantial evidence of record supports the Carrier's determination that Mr. Fisher was guilty of the above set forth charge. The testimony of Conrail Police Officers Kervin, Bowes, Pizzi, Esposito and Hartford clearly indicates that Mr. Fisher transferred fuel oil from a Conrail fuel truck to a privately owned fuel truck without permission. Theft is a most serious matter. We find that dismissal was appropriate. The claim is denied.

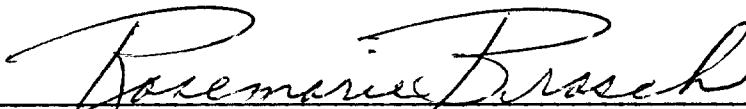
A W A R D

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 15th day of June, 1983.