

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. Claimant was dismissed from service without official, proper notice.
2. Claimant was not afforded a fair and impartial trial.
3. Not guilty as charged.
4. Discipline assessed is excessive.
5. Claimant to be restored to service with full pay and seniority.

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 employes 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 record indicates the Claimant, Melvin Moyer, was employed by Consolidated Rail Corporation as a Machinist at the Carrier's Reading Shops, Reading, Pa.

The Claimant was dismissed from service on March 21, 1981, following an investigation wherein he was charged with the following offenses:

"with your unauthorized possession of Conrail property and attempting to remove at approximately 3:35 A.M. Saturday, February 28, 1981, the Conrail property within a vehicle at the Spring Street exit from the shop yard; with your unauthorized presence on Conrail property on Saturday, February 28, 1981."

The record indicates that one of the police officers observed the Claimant enter Carrier's property after midnight on a Saturday evening and noted his actions on the property for over three (3) hours. The officer testified:

"At approximately twenty-five (25) minutes after midnight on the 28th, I observed a blue pickup truck enter the area of M of W Shops. This particular vehicle drove into the north end of that area and back up against a building which was later said to be called the Blacksmith Shop. I observed Mr. Moyer depart said truck and enter a building which connected the MW Shop and the Blacksmith building. Mr. Moyer was in that building for approximately one-half (1/2) hour, at which time he came into my view again and proceeded towards the back of his pickup truck.

For approximately the next three (3) hours and ten (10) minutes I kept the area surveilled and several times during that time period Mr. Moyer would enter the building, stay there for approximately one (1/2)(sic) hours, again come into view and walk to the back of his pickup truck. At one point and time during the three (3) hour period, I got closer to the pickup truck and viewed Mr. Moyer in the back of his truck with several 55-gallon barrels and a hose. At this point and time I went back to my first position and conducted the surveillance."

The Claimant attempted to exit the premises in his pickup truck at 3:45 A.M. and was blocked by two patrol vehicles. Those two officers testified and one found "six (6) 55-gallon drums and on top of that there was a hose approximately 100 to 110 feet long. On one end there was a shut off valve and on the other end it was connected to a short piece of metal pipe with a plug." One of the officers also testified that:

"Mr. Moyer stated to Capt. Rocke and I that he got the drums from Conrail and that he loaded them empty into his truck and he then filled them with Conrail fuel oil."

The testimony of all three (3) officers stands largely unrefuted or contradicted. The record indicates the Claimant was afforded a fair and impartial hearing and was given the opportunity to examine all Company witnesses. He received timely notice of the charges and of the Carrier's contemplated actions against him.

Based upon the record, the Carrier has met its burden of proof. The actions of the Claimant in stealing Carrier property were both sufficiently serious and calculated to warrant separation from service regardless of length of service. The Claimant is found guilty as charged.

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Award No. 9821
Docket No. 9705
2-CR-MA-'84

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984