

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That Laborer Elmer W. Anderson was unjustly dismissed from service on November 14, 1981.

2. That accordingly, Laborer Elmer W. Anderson be returned to service, immediately, with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time, plus 6% annual interest. Also, reimbursement for all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time 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 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.

Claimant Laborer Elmer W. Anderson became an employee of the Elgin, Joliet and Eastern Railway Company at Carrier's East Joliet Roundhouse at East Joliet, Illinois.

On date of November 9, 1981, Carrier sent a directive to Claimant requesting him to appear for a formal investigation at 2:00 P.M. on Friday, November 13, 1981, in the office of the Chief Mechanical Officer in the O. and C. building at Joliet, Illinois. The purpose of investigation was allegedly to develop all facts and determine Claimant's responsibility, if any, for alleged unauthorized possession and removal of a shop vice from Company property at approximately 11:00 A.M. November 1, 1981.

Claimant was also advised that he could bring witnesses and/or representation as provided in the controlling agreement. The investigation was held as scheduled and under date of November 13, 1981, Carrier advised Claimant that he was dismissed from the service of the Carrier.

In appealing this case to this Board the Organization contends that the Claimant was unjustly dismissed***not given a fair and impartial investigation. Was not represented by his Union Representative***that the Carrier did not notify the Organization of the investigation which the Employes contend should have been done***that the Claimant did not know the possible "recourse" that could happen to him by not being properly represented, and that the Claimant was not familiar with the proceedings of an investigation.

We have carefully considered these contentions and do not find them persuasive, we note that Claimants employment date was January 28, 1970, thus he had been employed by the Carrier for almost twelve (12) years, further that he had been subject to discipline five (5) times before including two (2) suspensions, he certainly was familiar with the "proceedings of an investigation" and certainly could and should have asked his Organization for representation himself. Also he could have protested himself when no Representative came to represent him, and asked for a postponement. We note also the following questions and answers at the start of the investigation.

"G.W. Scully: Mr. Elmer Anderson, do you have a Representative present?"

E.W. Anderson: No.

G.W. Scully: Are you ready to proceed?"

E.W. Anderson: Yes."

An employee cannot agree that he is ready to proceed with the investigation knowing that he had no Representative present, and then later claim an unfair investigation because no Representative was present.

The Employes also refer to the fact that that special agent who interviewed the Claimant was not present at the investigation and his report was read by another special agent, but this would not have changed anything as it would have been the same report regardless of who read it. The Employes further refer to the fact that the Claimant was not charged with:

"Alleged unauthorized possession and removal of a shop vice from company property at approximately 11:00 P.M. November 1, 1981."

And then to Special Agent G. T. Cyrkiel's testimony that:

"G.T. Cyrkiel: Yes, I have a statement here from Special Agent Elens. Special Agent Elens interviewed Elmer Anderson who worked as Hostler from 3:00P.M. on 10/30/81 at the start of his shift***"

And then allege in part:

"How could Special Agent Elens investigate a matter that allegedly did not happen until 48 hours later? From this we can only conclude that the facts presented were not accurate."

We do not read it that way, the first apparently refers to a previous interview. The pertinent part of Special Agent Cyrkiel's report is in part:

"On November 6, 1981 at 2000 hours I did a follow up investigation***
On November 6, 1981 at 8:00 P.M., A Mr. Elmer W. Anderson was interrogated by myself***" the most damaging to the Claimant is however his own testimony pages of the investigation which is:

"G.W. Schully: Mr. Anderson, you have heard officer Cyrkiel's statement, do you have anything further to add regarding the matter under investigation?

E.W. Anderson: No, only I'm sorry I lied about it***.

G.W. Scully: Talk louder please.

E.W. Anderson: Like I told him, like I told Officer Cyrkiel, at the time I was walking through the shop and I seen the vice and then something just came over me and I stole it. I'm sorry that I did it."

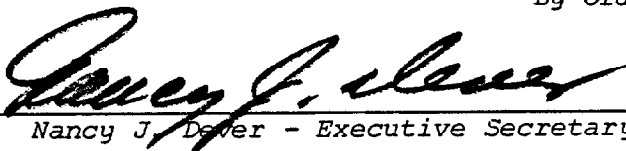
There can be no explaining that. With the evidence shown in the testimony especially the Claimants own admission of the theft, we have no choice except to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984