

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Washington Terminal Company

Dispute: Claim of Employees:

1. That in violation of the current agreement, Car Repairman E. Reeder was unjustly suspended from service of the carrier following hearing held on March 19, 1981.
2. That accordingly the carrier be ordered to make the aforementioned E. Reeder whole of all privileges that he is entitled to under rules of the agreement of June 1946.

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 shows that the Claimant is a Car Repairman employed by Washington Terminal Company. The Claimant, following a hearing on March 19, 1981 was assessed a three (3) day suspension for the following offense:

"Failure to return Company property when on January 2, 1981 a 3/8" variable speed reversible screw drill, property of the Washington Terminal Company, was loaned to you by Foreman U. Naughton for the purpose of making repairs to Amtrak equipment--you have failed to return this drill."

The Organization maintains that the Carrier has never in the past held employes responsible for the "mysterious disappearance" of company equipment. The Organization contends the employe was unjustly disciplined and the charge should be expunged from his record.

The Carrier notes the Claimant was represented and received a full opportunity to testify in his own behalf. The Carrier argues that while the instance is rare, it has in the past held employes responsible for company tools. It maintains the evidence proved the Claimant was guilty of the charge lodged against him.

The record indicates that the Claimant had been assigned the duty of repairing seats and he borrowed a 3/8" drill from his foreman in order to make the repairs. The foreman testified that sometime the following week he discovered the drill was missing when the Claimant sent his apprentice to pick up the drill for additional seat repair work he was doing. It was only then the Foreman realized the drill was missing and the Foreman subsequently advised the Claimant. The Foreman testified:

"Mr. Reeder came into the office then and told me that he thought that he had returned the drill, but that the men in the 120 day gang might have taken the drill and locked it up in their locker. He went to look for the drill and he could not find it there. So Mr. Reeder said he did not know where the drill was."

A notation of "lost" was then placed in the Foreman's log.

The Claimant testified that when he had finished his work at the end of the day:

"After completion of repairing the seats at the end of the day, I gathered up all of my tools and working equipment. I took the equipment to the glass room. Passing by the office Mr. Naughton was not in the office at that time and it was about a quarter till 4:00. He was going through the inside of 60. So, I took all of the tools into the glass room. I took my tools and the drill and laid them on the table. I went and washed up and returned back. When I came back I put my tools in my locker and the drill was missing. So, I went on the assumption that the apprentice had turned the drill back in. At that time it was about - it was between 5:00 or a little bit before four o'clock before quitting time. But it is common to see all types of tools laying in the glass room on the table at the end of the working day, which is just before the car repairmen put them up or put them away."

The Claimant contends the first time he knew the drill was missing was when he was informed of the fact by the Foreman the following week. He also brought in his own personal 3/8" drill for use by the Foreman in the interim. There is no indication or even an inference in the record that the "lost" drill was taken by the Claimant. Even though the drill was physically being carried by his Apprentice at the time they entered the "glass room," the Claimant acknowledges his responsibility.

Since theft is not a question or charge, we are left with the question of how the Carrier handles matters involving missing property. The representation that the Carrier does hold employees accountable is not borne out by the testimony of the Foreman, who testified:

"Q. Mr. Naughton, in reference to the drill being missing, this is not the first occasion that items on the property that belonged to the Company have been reported missing, is it?

A. No. As far as I know it is not.

Q. Would you say there were numerous occasions where items have been missing?

A. Yes, I would say there were numerous occasions.

Q. And do you know of any other person that has been blamed for one of them being missing?.

A. No, I do not."

The Claimant cannot be singled out for disparate treatment.

The additional factors that a secure location for returning tools on the day in question was not made available to the Claimant on January 2nd requires that the Carrier share the responsibility for the lost item.

Since the Carrier has not sustained its burden of proving the Claimant to be solely responsible for the loss of the drill, the grounds for the three days suspension have not been established in the record.

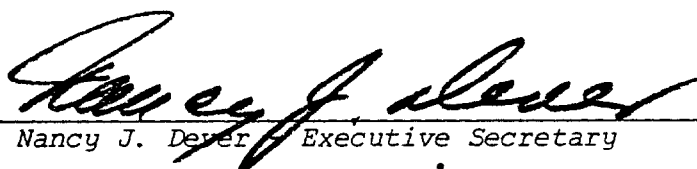
He shall be reinstated for all privileges lost and compensated for any wage loss for the three day suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984