

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Matthew A. Koch
(The Washington Terminal Company

Dispute: Claim of Employees:

1. That I, Matthew A. Koch, was denied a fair hearing in being denied the right to have a witness testify for me at the hearing of December 7, 1981, in violation of the procedural rules of the hearing as stated in the notice of the hearing and Rule 29.

2. That I was denied a fair and impartial hearing because evidence of past minor misconduct which was of no probative value was admitted while evidence of prior exemplary conduct which related directly to my behavior under similar circumstances was denied admission, and the ruling was explicitly predicated in large measure on the prior disciplinary record in violation of Rule 29.

3. That the hearing did not produce clear and convincing proof of theft. The investigating officer, Patrolman A. R. Lawson, testified that he observed me remove merchandise from the railroad car and mistakenly thought I had secreted it in my locker. When he discovered this assumption was in error he pursued the investigation no further. The evidence showed that I had transferred merchandise from the train which had improperly been left there by commissary personnel. I testified that my purpose and intent in moving it was to return it to its proper place. This was not rebutted but was corroborated by my actions, but I was denied the opportunity to produce my witness with evidence that I have turned in similar property on a prior occasion.

4. That I was unjustly dismissed and should therefore be reinstated with all seniority rights unimpaired and compensated for all wages lost including holiday, vacation, health and welfare benefits.

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 claimant herein (the Petitioner) was employed by the Carrier as a car cleaner, and had about two and one-half years of service. On November 25, 1981, he was notified by the Master Mechanic to report for a hearing on December 4, 1981, on the charge:

"Violation of Washington Terminal General Rule 'N' which reads in pertinent part: '...Stealing...while on duty...is prohibited.'" When on November 23, 1981, you were observed at the Station by a Washington Terminal Policeman on the west side of Track 23 transferring some merchandise from two yellow plastic Amtrak trays to a brown paper bag. This merchandise had been removed by you from Train 173 in Track 23 about 7:50 p.m. this same date.

Merchandise: 17 packs of coffee
2 packs of cigarettes
2 packs of playing cards
1 candy bar
6 bags of peanuts.

You may be accompanied by any witness or witnesses of your own choosing and your duly accredited representative without expense to The Washington Terminal Company. You may also bring to the hearing any documentation which would substantiate your defense."

By agreement with claimant's union representative, the hearing was postponed and conducted on December 7, 1981. A copy of the transcript of the hearing has been made a part of the record. On December 14, 1981, claimant was notified of his dismissal from the service.

We have carefully reviewed the transcript of the hearing and find that it was concluded in a fair and impartial manner. We find no proper basis for the contention of claimant that he was denied the right to have a certain witness present. He was advised in the letter of charge that he could be accompanied by "any witness or witnesses" of his choosing. The matter of arranging for the attendance of the witness was between the claimant and the witness. There is no showing that the claimant actually asked for the attendance of any witnesses prior to the hearing. There was no violation of the agreement, nor was it prejudicial to claimant, to refer to his prior record in the investigation.

There was substantial evidence in the investigation in support of the charge against claimant. He had no work to perform on the inside of the car from which the merchandise listed in the letter of charge was removed. A Patrolman for the Carrier testified that he saw the claimant remove at least part of the merchandise from the car, and observed him going into the cabinet behind the bar of the car. There was no justification for claimant's removal of any merchandise from the car. His contention that he was simply trying to put it in a safe place, or protect it, is not persuasive.

Form 1
Page 2

Award No. 9967
Docket No. 9988-I
2-WT-I-CM-'84


On the record before us, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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 13th day of June, 1984