

The Second Division consisted of the regular members and in addition Referee Ida Klaus when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(The Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That under the current agreement Firemen and Oiler P. C. Guerra, Jr. was unjustly suspended on November 18, 1980 and dismissed from the service of the Carrier on December 9, 1980 following an unfair and improper formal hearing held on December 5, 1980.
2. That accordingly the Carrier be ordered to make the aforementioned P. C. Guerra whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, customs or law; and compensated for all lost wages plus 6% annual interest on all such lost wages.

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.

On November 5, 1980 the Claimant, an employe of 37 years, pleaded guilty to the charge of theft of \$1000 contained in an official indictment obtained following a police investigation. The theft consisted of the Claimant's unauthorized use of the Carrier's credit card to purchase gasoline for his own purposes. The Claimant had used the card from October 1, 1978 to November 1979.

On November 18, 1980 the Claimant was suspended from the Carrier's employment, pending an investigation, for violation of Rules 801 and 806 of Carrier Rules and Regulations. Rule 801 states that, "Employees will not be retained in the service who are...dishonest...". Rule 806 provides, in pertinent part, that, "Employees must not use the Company's credit...unless specially authorized". An investigation was conducted by the Carrier on December 5, after which the Claimant was terminated.

The Organization does not dispute the fact that the Claimant used the Carrier's credit card for his own purposes, nor does it dispute the Claimant's plea of guilty. The Organization's argument is that because the Claimant was an employe of many years, a respected member of the community, and willing to make restitution, he should not have been dismissed. The Organization also contends that the investigation was unfair because it was not held promptly, in accordance with Rule 33(a) of the Agreement, in that it took place over one year after the alleged offense.

The Carrier's position is that the Claimant's undisputed theft of the Carrier's property and conviction of a third degree felony well justify the dismissal. The Carrier argues that the investigation was held promptly since the notice was sent to the Claimant thirteen days after he signed the guilty plea.

With regard to the Organization's procedural argument, there is no valid basis for the assertion that the investigation was not held promptly. The Carrier was aware of the ongoing criminal proceedings which resulted in the indictment of the Claimant, and it waited until their resolution to take action under the agreement. The Carrier's notice of the investigation, sent thirteen days after the Claimant signed the guilty plea, thus was prompt action on its part.

It is undisputed that the Claimant has committed the very serious offense of theft of the Carrier's property. An instance of theft such as this, even in the case of a long-term employe, is clearly a dischargeable offense. In the absence of evidence that the discipline imposed was unreasonably excessive, or that the investigation was unfair or impartial, the determination of the Carrier must be allowed to stand. We see no reason why it should be modified here.

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 January 1985.