

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 7
Parties to Dispute: (
(Metro-North Commuter Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly dismissed Electrician Daniel Nelson from service effective June 25, 1983.

2. That accordingly, the Metro-North Commuter Railroad Company be ordered to restore Electrician Daniel Nelson to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service at the applicable Electrician's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

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 D. Nelson was employed by the Carrier as an Electrician at its Harmon, New York Diesel and Electric Shop at the time of the incident in question. At the completion of his 8:00 a.m. to 4:00 p.m. tour of duty, Claimant was leaving the shop when he was stopped by a railroad police officer and later charged as follows:

"Unauthorized possession of 100 ft. of electrical wire on Sunday, May 23, 1982 at approximately 4:00 p.m. wherein you were found walking from Harmon Shop to the employee parking lot with the wire in a brown paper bag."

The Claimant was held out of service pending the outcome of the trial, later held on June 14, 1982. On June 24, 1982 the Carrier notified Claimant that he had been found guilty of unauthorized possession and was dismissed from service with the Carrier.

A complete review of the record with respect to the charges indicates that the Claimant did leave his tour of duty carrying the wire in the bottom of a brown paper bag with some clothes on top. Neither the Carrier Police Officer, nor the Assistant Shop Manager who interviewed the Claimant, was offered any explanation as to why he had the wire in his possession on May 23, 1982. The Assistant Shop Manager stated that the wire was identified as belonging to the Company. The Claimant during the trial indicated that he had found the wire in a dumpster and taken it into the shop to be cleaned assuming it had been thrown away, but did not look to see if it was identified as Company property. Claimant admits to having possession of the wire and that he lacked any permission to possess it.

It is not the role of this Board, which serves an appellate function, to substitute its judgment for that of Carrier's in discipline cases. Its role is to determine if there is substantial evidence to sustain a finding of guilt (see Second Division Awards 7912, 7955, 6948) and if the penalty is excessive considering the facts of the case before it.

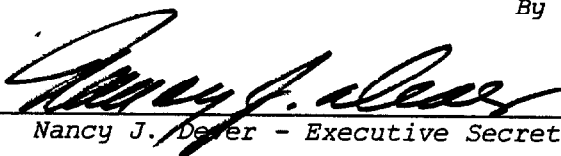
In the instant case, the Carrier has met its burden in providing substantial evidence to support a conclusion that the Claimant was guilty of unauthorized possession of Company property. As for the discipline assessed, this Board is not warranted in disturbing Carrier's judgment unless the discipline imposed appears to constitute unacceptable managerial discretion considering the circumstances and events. Unauthorized possession of Company materials of any type is a most serious charge. Once that charge is clearly substantiated, as it is in the case at bar, dismissal from service is neither unjust, unreasonable, arbitrary or an abuse of managerial discretion. A long list of awards has consistently held that behavioral dishonesty of any form justifies the penalty of dismissal (see Second Division Awards 8159, 7846, 7762, 7746). This Board will not disturb Carrier's judgment in the circumstances of this case.

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 March 1985.