

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

(International Association of Machinists and Aerospace
(Workers

Parties to Dispute: (

(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That, Southern Pacific Transportation Company violated the current controlling Agreement, Rule 39, but not limited thereto, when they improperly dismissed Machinist Helper Bob Seuell (hereinafter referred to as Claimant) from service on December 20, 1983.

2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and full compensation for all 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 employees involved in this dispute are respectively carrier and employees 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, a Machinist's Helper with the Carrier, in service since April 28, 1977 was dismissed from service on December 20, 1983 as a result of an Investigation held December 5, 1983. The Claimant was dismissed for dishonesty in that he allegedly used Carrier Vouchers to secure Yellow Cab Company taxi rides without authority on fourteen occasions and was under the influence of alcohol while on duty on November 16, 1983, which were said to be violations of Rules 801, 806, and G.

The Organization argued the Carrier has not met its burden of proof in this matter. There is no showing that the Claimant was intoxicated on the date in question, and the Claimant made no effort to hide his use of Carrier Vouchers. He did not ask that the charges be given to the employer. The Organization notes the Claimant used his real name, and there was no intention to deceive the Carrier.

The Carrier argued as follows: The Claimant admitted his dishonesty in this case and offered to reimburse the Carrier. He used the Carrier Vouchers because he was low on cash, and he certainly did not have any permission to do so. The Claimant admitted that he knew it was wrong. The Carrier also noted the first instance of improper use of vouchers occurred on August 30, 1983, and it wasn't until November 16, 1983 that the Carrier discovered this improper usage. It was only then that the Claimant offered to reimburse the Carrier. With respect to the working under the influence of alcohol charge, several Supervisors detected the odor of alcohol on the breath of the Claimant on November 16, 1983. Finally, the Carrier submitted the work record of this Claimant. The Claimant had been dismissed and reinstated on two previous occasions on a leniency basis; he had been disciplined by a fifteen day suspension; and he was counseled on two occasions with respect to absenteeism.

Upon complete review of the evidence presented, the Board finds insufficient evidence to show that the Claimant was under the influence of intoxicants on November 16, 1983. The level of proof that is required for a charge, such as this, was not met by the Carrier. With respect to the dishonesty charge, the Board finds the Claimant did in fact utilize Carrier resources for his personal use, which amounts to theft. Theft is an extremely serious charge and, when proven, almost always merits dismissal. In addition the Claimant's work record is exceptionally poor. The Board finds that the penalty imposed in this case to be reasonable and fair. Therefore, the Claim. will be denied.

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 2nd day of April 1986.