

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

1. That under the current Agreement, Mechanical Department Electrician V. Stoian was unjustly treated when he was dismissed from service on January 17, 1991, following investigation for alleged violation of portions of Rules 801, 802 and 810 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines).

2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Electrician V. Stoian to service with all rights unimpaired, including service and seniority, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages; including interest at the rate of ten percent (10%) per annum.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee 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 were given due notice of hearing thereon.

Claimant works as an electrician at the Carrier's West Oakland, California, Diesel Shop. On the date under scrutiny, he worked the shift from 11:30 P.M. on November 11, 1990 to 7:30 A.M. on November 12. At approximately 6:45 A.M., a member of the Carrier's Police Department observed his pick-up truck parked within the roundhouse building area. Since it was unusual for company vehicles to be parked in the area, he made a security check. He observed that the truck bed contained three cases of bottled water, one case of paper towels, one half case of facial tissue, a company tool box with

assorted wrenches, sockets, etc., and a drum containing about fifteen gallons of diesel fuel. The tool box and fuel were identified as being the Carrier property. Apparently it was normal for the Claimant to have the Carrier property in his pick-up as no further reference was made to it during the processing of the dispute. The remainder of the items were identified as being Amtrak property by an Amtrak Manager of Maintenance and an Amtrak Supervisor. It is clear that Claimant did have Amtrak supplies in his vehicle. There is much discussion in the record regarding whether or not the Amtrak property was covered up as though Claimant was attempting to hide it. However, the security officer who discovered the items testified, when questioned, that the only thing covered was the bottled water and he agreed that the objects were "not being hidden, no tarps, no nothing over it."

The first person to question the Claimant at the point of discovery was the Carrier Trainmaster. He was called by the Southern Pacific Police Department and asked to come to the Diesel Shop to investigate an incident regarding possible theft by an employee. After observing the truck, he asked Claimant how the items found themselves in his truck. The Trainmaster testified that Claimant responded: "he told me that he found all the items in a dumpster and he said specifically, the 4th Dumpster down in the passenger yard. I asked Mr. Stoian how the stuff happened to be in the dumpster and how he found it there and, of course, he indicated that he didn't have any idea why it was in the dumpster; he thought maybe that the stuff had been discarded but he found it and put it in his truck and he indicated that he planned to keep it since he found it in the dumpster." Claimant's testimony is essentially the same as the Trainmaster. The Claimant further testified that he found the material while searching for discarded boxes to assist in moving some material at his home. There is no evidence in the record to indicate that the Carrier made any effort to determine whether or not the Amtrak material was in the dumpster as claimed, or where it came from. Its approach to the problem is described in the Carrier's first letter declining the Organization's request for reinstatement:

"If, as he alleges, he found items in dumpster,  
prudent thing for a reasonable man to have done was  
return items to proper department, not squirrel them  
away in back of pick up. Can't buy the story."

While this may be a reasonable statement, it does not constitute proof that Claimant's testimony was not truthful. The Carrier relies on a claim that the Claimant changed his story as evidence of his culpability. That judgment is based on the testimony of the special agent and the Amtrak Facility Manager that Claimant made a gratuitous statement when he first walked up to the truck that somebody put the material in his truck. The Transcript reveals that the comment was made to the Amtrak official and the special agent overheard it. Neither of the officials talked to the Claimant or asked him any questions. The Claimant denies that he made the statement. The pertinent responses in the transcript read:

"Yes sir, Mr. Stoian, you have testimony of two separate individuals, Mr. Vandenburg and Officer Cobette, . . .

Yes

that have stated that you made the comment to them both or in their presence, the 'somebody put boxes in my truck?' Did you make that statement sir?

No, No I don't make because Mr. Vandenburg he was pointing to my truck and I mentioned it, Mr., was in, the officer was sitting in his truck it was not outside, the, it was a little noisy over there and Mr. Vandenburg he was outside I think, don't think somebody put that one in, I got it from the garbage but they understand, how do they understand. (SIC)

Well we want you to be specific on what you said  
. . .

Yeah, don't think somebody put the boxes in.

You don't think that somebody put the boxes in your truck?

Yes

It was their understanding that you made the statement that somebody put the boxes in your truck?

No, no, no I don't make this statement sir, no.

Did you indicate to either gentlemen, either Officer Cobette or Mr. Vandenburg, how the material got into your truck?

No, they don't ask me any questions, I don't think touch nothing yet, they don't touch anything, they just turned around and they go to their truck and they left, Mr. Vandenburg and Mr. Coleman, Mr. Cobette just was waiting for Mr. DuBose to arrive, no comment no conversation except this statement that's it."

The Claimant appeared before this Board and was granted the right to make a statement. The situation at the time, the verbal difficulties of the Claimant, and the fact that neither official spoke to him or asked any questions casts some doubt on the validity of their judgment regarding Claimant's comment. There is insufficient proof that the Claimant changed his story.

Based on the foregoing and the entire record this Board must conclude that Claimant did have Amtrak property in his pick-up and that there is no credible evidence to refute his story that he found it in the dumpster. We agree with the Carrier that the prudent thing to have done was report the items he had found. Claimant admits he did the wrong thing on the morning in question by removing the items from the dumpster without informing anybody.

The Claimant had been employed for some sixteen years with no evidence on the record of any problems as an employee. While his transgressions in this case are serious, we cannot conclude that they merit the capital punishment of industrial relations and we return him to service. Claimant will be returned to service with seniority rights unimpaired but without payment for wages lost.

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 14th day of October 1992.