

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Extra Gang Laborer L. L. Brown be returned to the service of the Carrier with seniority rights unimpaired and be allowed pay for all time that he has been held out of service subsequent to July 22, 1947.

OPINION OF BOARD: This claim involves the dismissal of an employee from the service of the Carrier. The Organization alleges that the testimony at the investigation did not support the charge against the employee as made in the letter of July 22, 1947, by the Division Engineer. However, at the investigation of the dismissal on August 2, 1947, the dismissal was stated to be "for taking without authority, and, having in his possession certain food stuff or other commissary supplies from the Dining Car Department of Extra Gang No. 2, and shipment of food stuff, or other commissary supplies from Gang No. 2, for his own use and without proper authority." No objection was made to the altered charge.

Consideration of the record clearly shows the truth of such charges except that the employee denied shipping any such articles or using them himself. Thus whether the whole charge was established is dependent upon the acceptance of his testimony or that of the Inspector who found the articles. Careful consideration of the whole record indicates that there are and were substantial reasons for accepting the Inspector's testimony as truthful. Under such circumstances we should not alter the decision of the official who conducted the investigation. We should not usurp the Carrier's responsibility in discipline cases where there is substantial evidence to support the charge.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 27, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of October, 1949.