

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24388
Docket Number MW-24594

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation
(former Penn Central Transportation Company)

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

(1) The dismissal of Welder Helper Robert Bailey, Jr. for alleged 'unauthorized possession of, and removal of four (4) hubcaps from van-automobile located on Conrail automobile carrier car in Train IHCR6 at Salamanca, N.Y. at approximately 8:30 A.M. on September 17, 1979' was arbitrary, without just and sufficient cause and on the basis of unproven charges.

(2) Welder Helper Robert Bailey, Jr. shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to his dismissal, claimant was employed as a welder helper with about nine years of service. On the date involved in the dispute, claimant was assigned to work with welder R. W. Wheeler. They proceeded to Salamanca, N.Y., in Conrail Truck J 1105, to weld rail ends. They arrived at that location about 7:55 A.M. The welder went to the depot to check on trains and claimant states that he went to the rest room in the depot. A few minutes later a freight train stopped at Salamanca. On September 21, 1979, claimant was notified to report for hearing on the charge:

"The unauthorized possession of, and removal of four (4) hubcaps from van-automobile located on Conrail Automobile carrier car in Train IHCR6 at Salamanca, N.Y. at approximately 8:30 A.M. on September 17, 1979."

The hearing was scheduled for September 28, 1979, and was conducted as scheduled, following which claimant was notified on October 9, 1979, of his dismissal in all capacities.

In the investigation, or hearing, the only witness, besides the accused, was a Mr. S. D. Denning, Patrolman, Salamanca Police Department. The Patrolman testified that he received a call from an informant who reported that there were two men on Conrail Truck J 1185, across from her house, and one of them had removed a hubcap from a van on the train; that the man saw her watching him, replaced the hubcap and left; that a short time later the same truck returned and one of the men again removed hubcaps from a vehicle on the train and this time did not replace them.

The Patrolman went on to testify that upon receipt of the calls mentioned, he proceeded to Comrail Yards, found the truck identified parked beside the standing train with two occupants in the cab, the claimant and Welder Wheeler. He questioned Wheeler if he had any knowledge of the hubcaps being taken from the train, that Wheeler was nervous and evasive and denied any such knowledge; that he searched the truck and in the tool box he found four hubcaps, stacked one on top of the other, which hubcaps were identical to others that were on the vehicle on the bottom of the automobile carrier car; that Welder Wheeler and claimant denied any knowledge as to how the hubcaps got into the tool box of the truck; that he checked again with the original informant, who stated that it was not the blonde who took the hubcaps, but the driver with the red hat. He testified further that the welder, Wheeler, was wearing a red baseball cap. On questioning by claimant's representative, the Patrolman testified that there were two vans on the lower tier of the automobile carrier car that had hubcaps missing that were identical to the ones that were on other vans and to the four found in the tool box of the truck and that two hubcaps were missing from two different vans.

In the investigation claimant stated that after various activities, he and the welder had been in the truck about ten minutes when the Patrolman arrived; that he noticed hubcaps missing from the vans; that the train had been stopped about fifteen or twenty minutes when he observed the hubcaps missing; that he saw Welder Wheeler remove one hubcap and replace it. He also testified that Welder Wheeler was wearing a blue cap; that he had none; and that he saw no one in the vicinity of the truck when he and Wheeler returned from the depot.

From a review of the transcript of the investigation, it appears quite clear that the actual removal of the hubcaps from the vans was by Welder Wheeler. However, with claimant's close association with the welder, from the time they arrived at Salamanca until the hubcaps were discovered in the tool box of the truck, it is incredible that claimant did not know of the removal of the hubcaps from the vans and the placing of them in the tool box of the truck. Also incredible is claimant's statement that Welder Wheeler wore a blue cap. The latter statement could only be considered an effort to defend himself and Wheeler. There is no evidence that claimant made any effort to prevent the theft of the hubcaps, or report the theft to any officer of the Carrier. Under all the circumstances, we agree with the Carrier that claimant was an accomplice to the theft and was guilty as charged.

This Referee does not subscribe to the dictum contained in some few awards that: "No man should be found guilty of a disciplinary charge solely on the unsubstantiated evidence of a sole witness." Many disciplinary cases have been decided strictly on the basis of the testimony of one witness against the accused. In such cases the issue then comes down to the credibility of witnesses, as judged by the hearing officer. In disciplinary cases the same burden of proof is not required as may be required in court cases and the same

rules of evidence do not apply. In the present case it is quite clear that the Salamanca Patrolman had no interest in the discipline to be imposed by the Carrier.

In the railroad industry one of the most serious infractions by an employe is the tampering with or damage to shipments entrusted to the Carrier. The public has a right to rely upon the integrity of Carriers and their employes in the care and handling of goods entrusted to their care. The breach of that trust undoubtedly damages the relationship that existed between the Carrier and the clients it serves.

The claim herein must be denied.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was not violated.

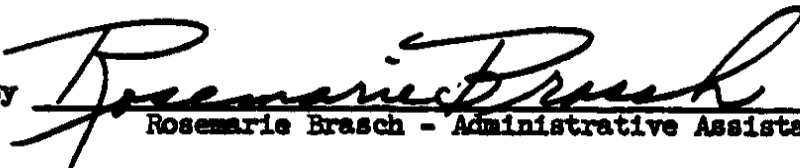
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1983.