

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - L. C. Yahnert
Award No. 92
Case No. 92

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

That the Carrier's decision to terminate Claimant, L. C. Yahnert's services with the Carrier was excessive, unduly harsh and in abuse of discretion, and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant had worked for the Southern Pacific Transportation Company for two years less three months at the time of the incident which precipitated his discharge. At

sometime before working with SPTC, he worked for Union Pacific and was eligible for an Amtrak Rail Privilege Pass. On February 25, 1988, the Claimant was a passenger on Amtrak Train Number 11 which arrived in Los Angeles about 6:00 p.m.. Upon its arrival, one of the passengers reported the theft of her camera, a radio and money in the amount of \$210.00. When she was questioned by Amtrak Police Officer, Mr. Holloway, she indicated she believed the Claimant was a likely suspect in the theft since he had been sitting beside her during the trip. The Claimant who was nearing them, agreed to have his baggage searched, but nothing was found.

The victim then went to fill out an incident report. About twenty minutes later, Mr. Holloway received an Incident Number which the victim would need for insurance purposes and proceeded out onto the platform area to find her. He noticed she was talking to the Claimant. At first he thought they were having a casual conversation, but as he neared he realized they were arguing. It turned out the Claimant was now in possession of a black bag which he had not had when he was searched earlier. The victim searched the bag and found her camera, radio and on the Claimant was found \$410.00 in cash. Subsequently, the Claimant allegedly showed the others where the victim's other stolen possessions were located, i.e. her check book, wallet and several exposed roles of film.

When the Claimant was found to be in possession of the stolen items, he was placed under arrest. During an inventory of his possession, it was discovered he had the Amtrak Rail

Pass. He was asked where he worked and he reported he worked for the SPTC. The suspect was eventually charged with receiving stolen merchandise, served twenty (20) days in jail and placed on two years probation.

When the Carrier discovered this incident, they sent the Claimant a charge letter advising him to appear for hearing to determine whether he violated Rules L and 607 of the Rules and Regulations for the Government of the Maintenance of Way and Structures and Engineering Department Employees of the Southern Pacific Transportation Company, those portions which read:

Rule L: Employees must conduct themselves in such a manner that their Company will not be subject to criticism or loss of good will.

Rule 607: CONDUCT: Employees must not be. .

(4) Dishonest. Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.

The Carrier believed the evidence showed the Claimant was guilty of violating the cited rules and dismissed him by letter dated March 29, 1988. The Union appealed this matter to this Board.

The Claimant's version of what happened is really not credible. Especially since the explanation of the events provided by the Amtrak Officer provided substantial evidence against the Employee. Therefore the burden of proof shifts to the Claimant to show that his version of the occurrence is more believable. He did not meet this burden. Certainly he had more reason to distort the truth than the Amtrak Officer. The other

thing which was very noticeable to this Board was the obvious attempt on the part of the Claimant to avoid any discussion of the \$410.00 which was taken from him at the time of the arrest. While the \$100.00 he allegedly lost in purchasing the camera seemed to have left an impact, the \$400.00 which was taken from him did not.


The final question to be addressed by this Board, is whether the Company has shown a sufficient nexus between the Claimant's employment with the Carrier and his off-duty conduct. Here the burden is on the Company to show the nexus exists. Their failure to do so would cause this Board to take a hard look at the dismissal issued to the Claimant. While normally this Board would require more concrete evidence that their reputation was damaged by the off-duty actions of the Employee, we believe the circumstances of this case have obviously exposed the Carrier to disadvantage. First of all, the Claimant's use of the Amtrak Privilege Pass revealed that, at least at some point, he probably worked for a railroad company. Even though his eligibility for the pass was the result of his working for the Union Pacific Railroad, the fact he possessed such a pass would provoke questions about his employment. And his theft occurred on an Amtrak train. While we would not contend Amtrak is a competitor, it is an entity within the same industry. Not only is there intense competition within the industry, but from transporting firms outside the industry. One of the factors which attract business is the user's confidence in the company it engages to transport its products. If there is any thought

the company considered employed individuals who had been found guilty of theft, it is highly unlikely the services of the company would be utilized. The Claimant's actions showed a total disregard for the Company's relationship to others in the industry and therefore to its reputation.

Furthermore, while the overall position of arbitrators is that off-duty conduct is none of the Company's business, the Company has to be concerned when an employee has demonstrated he cannot be trusted. The Company would not have hired the Claimant if his initial application would have contained an incident of arrest for theft and there is no reason they should be compelled to retain him in this instance.

AWARD

The claim is denied.



Carol J. Zamperini
Neutral

Submitted:

December 29, 1989
Denver, Colorado