

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. That the National Railroad Passenger Corporation erred and violated the contractual rights of Mr. Brian S. Salonia, Electrician, Los Angeles when they suspended him from service effective September 14, 1988.
2. That, therefore Mr. Brian S. Salonia be compensated for all lost time including overtime and holiday pay and,
3. That he be made whole for health and welfare benefits and,
4. That he be made whole for all vacation rights and,
5. That he be made whole for pension benefits, unemployment and sickness insurance and,
6. That he be made whole for any and all other benefits not specifically mentioned herein, that he would have received or would have earned had he not been withheld from service.

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 employes involved in this dispute are respectively carrier and employes 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.

By certified letter dated July 15, 1988, Claimant was directed to appear at a formal Investigation alleging violation of Rule F and Rule K in that he had in his possession three tanks of Freon. After postponement, the Investigation was held on September 1, 1988, and subsequently Claimant was dismissed from the service of the Carrier.

It is the position of the Organization that the Carrier violated Rule 23 of the September 1, 1975 Agreement when the Hearing Officer notified Claimant that he was dismissed by letter dated September 14, 1988, but did not so notify the General Chairman until October 26, 1988. A copy of an envelope mailed to the General Chairman postmarked October 26, 1988, was submitted to substantiate that charge. The Organization also argues that the discipline was excessive.

The Carrier denies any procedural violation of the Agreement. The Carrier points out that the language of Rule 23 does not contain any requirement that the General Chairman be provided a copy of the assessed discipline. The decision letter dated September 14, 1988, was provided to the Organization's representatives who were present at the formal investigation. As for merits, the Claimant admitted his intent to remove Carrier property. The Carrier argues that the offense of theft fully warrants dismissal.

In consideration of the procedural issue this Board has reviewed Rule 23. The Board is convinced on the basis of the Rule language and probative evidence that no procedural violation occurred. The decision was issued within the time limits required by Section (b). Rule 23(e) reads in full:

"A copy of the investigation transcript together with a copy of any documents placed in the record at the investigation shall be promptly furnished the employees and their representative. When notations are made against the records of employees, they will be furnished a copy."

No language requires that the General Chairman be furnished the transcript and notice of discipline assessed. It is unrefuted that the Organization's representatives received their copies within the time limits. The copy was promptly furnished. The Board finds no evidence in the record that the practice herein complained of was out of the ordinary.

As to the merits, this Board has reread the Claimant's statement at the formal investigation. The Claimant apologized for intending to remove for his own personal gain property that belonged to the Carrier. The statement is an admission that the Claimant was in the act of theft. Claimant put three fifty pound tanks of Freon in his motor vehicle.

The Claimant is a seventeen (17) year employee with only one previous infraction. Attempted theft of Carrier materials was more than a "stupid action" and a "mistake." It was a grievous act of dishonesty against the Carrier. The Claimant indicated he was "deeply sorry for his actions" and in essence requested leniency. This Board does not grant leniency. If guilt is established, it may only limit its review to the quantum of discipline. The Claimant was caught in the act of removing Carrier property. Theft is an action that this Board has ruled warrants dismissal. Dishonesty in any form undermines the nature of the relationship between the employee and employer. The Board does not find that the penalty of dismissal is excessive or harsh.

The fact that the Claimant is a long term employee is something the Claimant should have considered before he acted to remove Carrier property (Second Division Awards 9140, 6615). The Carrier considered the Claimant's length of service in its assessment of whether to maintain the Claimant in its employ or sever the relationship. For its own reasons, the Carrier chose to dismiss the Claimant. In view of his admitted guilt, Carrier's dismissal was fully warranted. There was no violation of the Claimant's rights or any probative evidence that a Rule was procedurally violated. The Claim must 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 7th day of August 1991.