

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISIONAward Number 3739  
Docket Number 3729

Referee Richard R. Kasher

PARTIES: Railroad Yardmasters of America  
TO  
DISPUTE: Chicago, Rock Island and Pacific Railroad Company  
(William M. Gibbons, Trustee)

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:

Yardmaster Fred L. Hamilton's record be cleared of all charges, that he be reimbursed for all time lost (45 days), that he be reimbursed for all legal fees because of court action, and that he be compensated for charges necessary to retrieve his personal automobile from the police ground.

OPINION OF BOARD: On July 22, 1978, Claimant, an Infreight Yardmaster, was arrested by City Police on the complaint of one of Carrier's Special Agents for an alleged theft of automobile tires. Claimant was also charged with violation of Rule K of the Uniform Code of Operating Rules. The civil action was subsequently dismissed for lack of evidence. This Board must determine whether the record on the property supports the Carrier's assessment of a 45-day suspension for Claimant's alleged violation of Rule K, which reads as follows:

"In case of danger of, loss of, or damage to railroad property by fire, theft, or other causes, employes must unite to protect it. They must exercise care in the use of railroad property and, when leaving the service, must return property entrusted to their care."

The undisputed facts are that: (1) Claimant, as Yardmaster, was the highest ranking supervisor in the yard on Saturday, July 22, 1978; (2) he was seen by Carrier's Special Agent loading tires, with the help of another individual, into his personal car; (3) after loading the tires into his car, Claimant and his companion drove toward the Carrier's Yard Office; (4) upon seeing a Special Agent's blue and black pick-up speeding up behind him, Claimant stopped his car; (5) Claimant and his companion, a switchman, got out of the car and approached the truck in an attempt to identify themselves and state the nature of their activities; (6) as Claimant and the switchman approached the truck, the Agent told them to get back into the car; (7) when Claimant and his companion did not immediately comply but continued in their attempt to identify themselves as Carrier employes, the Special Agent revealed his weapon, a revolver; (8) Claimant and his companion immediately complied; (9) the Special Agent then used his radio to call for the assistance of the City Police; (10) the Agent later brought Claimant and the switchman back to his office and received authorization to continue the arrest; (11) Claimant was arrested shortly thereafter and his car was impounded.

Claimant, testified that what he tried to explain to the Special Agent and what, in fact, he intended to do by loading the tires into his car, was to protect Carrier property. He believed that someone may have set the tires aside with the idea of later returning and stealing them, so he attempted to remove the tires to the Yard Office. Claimant alleged that he was attempting to enforce the very Rule on which the Carrier based its 45-day suspension.

The Special Agent testified that he became suspicious when he noticed three men loading something into a parked car, some 75 yards away from the Special Agents' Office. He also testified that as he approached the men in his truck they slammed the trunk of the car shut and jumped in the car and sped away (at 30 miles per hour). The Agent reportedly "chased" Claimant for approximately one quarter of a mile, when Claimant suddenly stopped his car, jumped out, and rushed to the Agent, heedless of the Agent's order to stay put. The Agent alleged that in order to retain control of the situation, he drew his weapon.

After arresting Claimant and the switchman, the Agent attempted to find out where the tires had come from. An examination of the trains then in the yard revealed that car RI28435 had a seal missing on one door. The door was shut but not sealed. The Agent obtained the help of a carman and, with a crow bar, attempted to open the door. The carman showed the Agent that the door was hung behind a striking casting and explained that in order to open the door a lift truck and torch would be needed.

Despite pages of conflicting testimony, accusations of racial prejudice, and a less than model hearing, what the record reveals is this: there was not one iota of evidence which indicated that Claimant had any intention of stealing the tires. Claimant, in broad daylight, seventy-five yards in front of the Special Agent's Office, loaded eight tires into his car. He was hardly driving at "getaway" speed. Where did the tires come from? That is difficult to say. However, in light of the fact that Claimant did not have the means of opening the door of car RI28435 far enough to slide out eight tires, it is doubtful that that is where he got them. The whole affair might have been avoided if the Special Agent had simply allowed Claimant to identify himself and explain his intentions.

In view of the foregoing, this Board finds that the Claimant's alleged guilt was not proven.

The Organization requests that Claimant's record be cleared of all charges, that he be reimbursed for the forty-five day suspension, that he be reimbursed for all legal fees necessary for the civil action, and that he be reimbursed for the charges necessary to retrieve his car from the police pound. It is not within the jurisdiction of this Board to award either the legal fees or the charges necessary to retrieve Claimant's car. However, Claimant is to be fully compensated for all time lost, with seniority rights and other rights unimpaired.

## FINDINGS:

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

The carrier and the employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained consistent with the above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:

Executive Secretary  
National Railroad Adjustment Board

By:   
Assistant Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1980.