

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Form 1

Award No. 4873  
Docket No. 4874  
93-4-92-4-3

The Fourth Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(The American Railway & Airway  
(Supervisors Association: A  
(Division of TCU

PARTIES TO DISPUTE:

(  
(Indiana Harbor Belt Railroad  
(Company

STATEMENT OF CLAIM:

"It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Rule 18 - Discipline, when as a result of hearing held March 25, 1991 on charges of unauthorized possession of Carrier's Truck license plate No. 49276Q Mr. R. Peterson, Foreman was disciplined in the form of dismissal from Carrier's employment. Said discipline being unjust, unwarranted and an abuse of Carrier's discretion.

2. Because of this unjust action, Carrier be required to return Mr. Peterson to his former position with all rights and benefits unimpaired, make him whole for all lost wages and clear his record of all reference to the charges."

FINDINGS:

The Fourth 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 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was advised of an Investigation on a charge that he was in "...unauthorized possession of (Carrier) license plate No. 49276Q, which was displayed on your personal vehicle." Subsequent to the Investigation, he was dismissed from service.

The record shows that a license plate was missing from a Carrier truck, although it was on the vehicle the previous day. Thereafter, a Police Officer observed the missing license plate on a vehicle parked in the Claimant's driveway. The vehicle was registered to the Claimant, but he had no current and valid registration at the time. He contends that he had been using the license plate and registration of a next door neighbor whose similar vehicle was inoperative.

Rule L prohibits "...unauthorized possession of, removal...of any material from railroad property...."

The Claimant denies knowledge that the missing plates were affixed to his vehicle and suspects that he was the target of police harassment.

Even if the Organization's assessment of the evidence is correct and it is circumstantial, that factor does not preclude a finding of guilt.


If the evidence taken as a whole is circumstantial, but the reasonable and appropriate inferences drawn therefrom support the charge, such evidence is sufficient, absent some showing to warrant a contrary conclusion. It is certainly a sufficient basis to form a prima facie case, and at that point it is incumbent upon the employee to rebut same. We find no such rebuttal here.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1993.