

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Carmen T. A. Detiege & J. B. Ross, Jr. were improperly withheld from service in violation of the Current Agreement on December 16, 1977, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to
 - (a) Restore them to service with seniority and all employee rights unimpaired.
 - (b) Compensate them for all time lost as a result of their dismissal with interest at the rate of 6% per annum on all money due them, and
 - (c) Pay premiums for their hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time they are 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant Carmen, Terry A. Detiege and John B. Ross, formerly employed at Carrier's Sibert Shops located at Mobile, Alabama, were first suspended from service during their tour of duty on November 19, 1977 and then subsequently dismissed from service on December 16, 1977, following a formal investigation held on November 29, 1977, wherein Claimants were adjudged guilty of the following three (3) charges: (1) leaving their regular work assignment prior to termination of their tour of duty without permission on date of November 18, 1977; (2) using Company equipment to load crossties for personal use during their regular work assignment without permission on date of November 19, 1977; and (3) theft of Company property during their regular work assignment on date of November 19, 1977.

While in the course of performing a routine patrol of the Car Shop's parking lot on the evening of November 18, 1977, one of Carrier's Special Agents, Dave Buchholz, observed a pickup truck pulling a load of crossties on a trailer and another pickup following behind, pulling a jeep, both heading past the depot on Interstate 10 West. As Buchholz recognized the vehicles in question belonged to the Claimants and knew their tour of duty had not yet ended, he proceeded to follow the vehicles. When Claimants stopped at a self-service gas station located on Dauphin Island Parkway near Interstate 10, Buchholz observed the two, noting Detiege eating potato chips and drinking beer. Buchholz then contacted the Car Shop Foreman, Stanley Holland, who advised Buchholz that neither Detiege nor Ross had been given permission to leave work early. The following day at approximately 4:30 P.M., Buchholz proceeded to the Car Shop with the intention of pursuing further, matters related to Claimants' early departure from work the night before and whether or not the crossties were loaded on the trailer during Company time. While in route, Buchholz noted Detiege's truck was parked at the north end of the Car Shop with trailer attached and that now the trailer was empty. Buchholz, suspecting Detiege intended to secure more crossties during his tour of duty that day, summoned another Special Agent, V. Lavender and together the two established a stake-out aboard a caboose parked just north of the Car Shop. At approximately 7:05 P.M., Detiege drove the truck and trailer to the south end of the Car Shop whereupon Agent Lavender left the caboose on foot to secure a better view of Detiege. Lavender returned to the caboose shortly thereafter and apprised Buchholz that Detiege with the assistance of John Ross was loading crossties onto the trailer using a Company forklift truck. At approximately 7:50 P.M., Detiege returned to his original parking place north of the Car Shop, at which time it was noted the trailer contained between 45 to 50 crossties. Several minutes later, Agents Buchholz and Lavender observed both Claimants walking between two uncoupled hopper cars about 300 feet north of the Car Shop carrying a long piece of channel iron, later determined to be 6 inches wide and 11+ feet long. According to both Special Agents, the Claimants loaded the channel iron into Detiege's truck and when they approached the Claimants minutes later, the Claimants, recognizing who Buchholz and Lavender were, attempted to retrieve the channel iron and take it back to the Car Shop. The Special Agents ordered Claimants to drop the channel iron and to accompany them to the Foreman's office. Car Shop Foreman, H. Smith was apprised by the Agents as to what had occurred and it was immediately determined the channel iron in question had come from a pile of iron located next to the Car Shop lunch room and that it was marked "Special Order". Foreman Smith then suspended both Detiege and Ross from duty at 8:30 P.M., November 19, 1977, pending further investigation of the matter.

A comprehensive review of the record before us reveals the Claimants were afforded a fair, just and impartial hearing, thereby leading this Board to conclude that the various procedural objections raised by the Organization are without merit in the instant case. The record further reveals that it was a common practice on the part of Carrier's supervisory force, at least on the second shift (3:00 P.M. to 11:00 P.M.), to allow subordinates to use Company equipment for personal use during the luncheon break. Therefore, even though Carrier had seemingly attempted to reverse this practice, its efforts were obviously half-hearted and haphazardly enforced. On this basis, the Board determines the Claimants were unjustly charged with using Company property, specifically the forklift truck, to load the

crossties and to have done so on Company time as the time in question was their luncheon period according to shop practice. As to the taking of crossties itself, the record reveals Detiege had a permit to secure this material and therefore this part of the charge lacks foundation. With regard to the taking of channel iron, the record is replete with contradictions. While the Special Agents contend the Claimants loaded the piece of channel iron onto Detiege's truck, other witnesses, in addition to both Claimants, testified the channel iron was at all times on the ground in close proximity to the truck. In explanation of why the channel iron was taken from the pile of "Special Order" iron, Detiege testified that he had intended to use the iron along with some blocks as a brace to be used between the pickup truck and the trailer as the trailer with all those ties was too heavy and it was tearing off the truck bumper and breaking the trailer hitch. The plan, according to Detiege, was to brace the middle and to disconnect the trailer from the truck, leaving the trailer parked to be picked up on some other day. The Board is unable to resolve this particular conflict in testimony but finds, given the apparent circumstances, Detiege's explanation to be at least plausible. As to Claimants having left work prior to the end of their tour of duty without permission on November 18, 1977, the Board finds unqualifiedly, the Claimants to be guilty as charged.

Based on the foregoing discussion it is our determination that the quantum of discipline imposed upon the Claimants, that of dismissal, was excessive in this case. This judgment however, should in no way be construed as downgrading either the seriousness of the offenses committed by the Claimants or the unacceptable unilateral manner in which the Claimants so acted. It is obvious that if every employee conducted himself/herself in the manner of Claimants' modus operandi, the work place would soon degenerate into total chaos with no one performing any of the many assigned tasks necessary to the operation and conduct of Carrier's business. However, the Carrier too is at fault here for creating a work environment in which employees are led to believe they can act in such a unilateral manner without impunity. Obviously the Carrier needs to institute some stricter procedures governing employees' use of Company equipment to perform tasks of a personal nature, what tasks of a personal nature can and cannot be performed by employees during working hours, and the securing of supervisory permission by employees to leave the work place during their assigned tour of duty. The appropriate discipline we deem at bar is one of reinstatement without back pay or other benefits, with the time off from service due to both the suspension and dismissal serving as their penalty. We caution the Claimants that upon their return to work to conduct themselves in a manner far more acceptable than that which characterized their deportment prior to dismissal.

A W A R D

Discipline modified in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of April, 1981.