

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr., when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Grand Trunk Western Railroad Company

Dispute: Claim of Employee:

1. That under the current agreement Laborer Pedro A. Ruiz was unjustly dismissed from service of the carrier following hearings held on date of October 17, 1978.
2. That accordingly the carrier be ordered to make the aforementioned Pedro A. Ruiz whole by restoring him to carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for all lost wages.

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 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.

Claimant contends that Carrier unjustly dismissed him from service as a consequence of an incident which occurred on October 4, 1978, wherein Claimant was "charged with responsibility for violating the provisions of Rule 11(c) of Carrier's Rules and Regulations by unauthorized possession of and/or removal or disposal of lumber belonging to the Carrier". According to Claimant, Carrier's action was arbitrary, capricious, and unjust, and an abuse of managerial discretion. Claimant also alleges that the investigation of said incident was not conducted fairly or impartially, and that the alleged stolen material was scrap lumber and was, therefore, of no value to Carrier. Additionally, Claimant contends that Carrier had previously authorized other employees to engage in similar activities, but said employees were not disciplined for their actions.

In light of the grievant's testimony, this Board concludes, without equivocation, that Claimant, at a minimum, conspired with and aided three (3) personal acquaintances in the removal of a quantity of lumber from Carrier's property on

the evening of October 4, 1978. Furthermore, by his own admission, Claimant acknowledged that: (1) it was he who instigated the operation; (2) he did not have the Carrier's permission to remove said lumber from Carrier's property; and (3) he was aware that Carrier's permission was required in such situations.

Even if one were to believe Claimant's version of this incident in that he did not know the identity of the occupants of the truck who entered the Carrier's property and loaded the lumber on the night in question, this Board cannot condone the wanton disregard of an employee who would knowingly encourage strangers to "help themselves" to the Carrier's supplies and who would stand by unchallengingly, and who, thereafter, would not report this activity to his supervisors or to the proper security officers.

As to the matter of the relatively insignificant value of the pilfered lumber, this contention is baseless since the record clearly demonstrates that the quantity of lumber which was taken was of some value and some use to the Carrier; and moreover, since the value of any item is a highly subjective consideration, such a determination, in itself, does not absolve the wrongdoer of his/her guilt, but may mitigate the severity of the penalty which ultimately is imposed.

The remaining issue of significance herein is the Claimant's contention regarding various due process violations which the Carrier is alleged to have committed during both the investigative and hearing phases of this matter. The Board has carefully considered this particular contention but cannot find any support for this charge which would invalidate any of the previous determinations posted above. Either these due process violations did not occur as the Claimant contends, or they are of such minor import that they have no influence in the outcome of this dispute since they do not impeach the weight or credibility of the evidence which has been proffered by the Carrier.

A W A R D

Claim denied.

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 4th day of June, 1980.