

Parties to Dispute: { International Brotherhood of Electrical Workers
Chesapeake and Ohio Railway Company

On May 1, 1980 according to the record, an official of the Carrier Police Department was notified by the Kentucky State Police that two men had been apprehended while in the act of taking new railroad cross ties from a stockpile along the right-of-way. The two individuals were identified as employees -- Electricians Glen C. Bailey and, the Claimant herein, Dallas R. Seagraves. They were arrested and bound over for consideration by an appropriate Grand Jury. The record shows that on May 16, 1980, a preliminary hearing in the Boyd County District Court found no probable cause to send the case to the Grand Jury. After several postponements, a hearing under the provisions of the Agreement was convened on May 21, 1980 on the basis of the charge of theft of cross ties. The Carrier presented testimony of the aforementioned security official. The Organization raised procedural objections and also raised as its defense the disposition of the civil/criminal aspect of this matter by the District Court.

We find nothing to support the procedural objections which centered around the wording of the charge and a claim of pre-judgment by the hearing officer. As to the merits question, it is axiomatic that actions brought under the aegis of a collective bargaining agreement are not bound by the decisions or conclusions of extra-agreement deliberative bodies. No less is the case here. Whether or not a court of proper jurisdiction chooses to dismiss or otherwise act upon an alleged offense, which is also subject to applicable Rules or Regulations under the Agreement, does not foreclose the pursuit of such offense. The case was made, and not refuted, that the Claimant was at the stockpile with new cross ties in a vehicle, that no such removal is permitted without express written permission and that none was produced. The Carrier forcefully argues that such action constitutes theft and that theft is an offense that cannot be tolerated. We find no basis to disturb the Carrier's disciplinary action in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemaria Brasch
Rosemaria Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of April, 1983.