

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the Current Agreement, the Consolidated Rail Corporation was arbitrary, capricious and unjust in their action of removing Electrician Ronald G. Johnston from the service on August 16, 1979 in violation of Rule 6-A-1.
2. That the Consolidated Rail Corporation was arbitrary, capricious and unjust in their action of dismissal from the service of Ronald G. Johnston on August 23, 1979.
3. That accordingly, the Consolidated Rail Corporation be ordered to restore Ronald G. Johnston to service will all seniority rights unimpaired and compensated for all wages lost by the unjust action of the Consolidated Rail Corporation in the removal and dismissal of Ronald G. Johnston.

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 joined the Carrier in late 1973 as a Laborer and was promoted to Electrician in 1974. At 12:12 A.M. on July 10, 1979, during his off duty hours, he was observed by one of the Carrier's Police Officers to be loading railroad ties into the back of his pick up truck at Mile Post 398 on the Hollidaysburg Branch Track in Altoona, Pa. The Claimant denies any intent to steal the ties. Rather, he claims he was merely demonstrating his strength by lifting the ties, and was suffering from diminished judgment due to prior consumption of alcoholic beverages. A trial was held on August 16, 1979, after which the Claimant was removed from service pending the Carrier's decision. On August 23, 1979, he was dismissed from service.

The Organization raised two main points in its position that the dismissal was improper: First, it claims that the August 16 removal from service was arbitrary, capricious and unjust, in violation of Rule 6-A-1. That Rule is quoted in pertinent part below:

- "(a) Except as provided in Rule 6-A-5 employees shall not be suspended nor dismissed from service without a fair and impartial trial, nor will an unfavorable mark be placed upon their discipline record without written notice thereof to the employee and his union representative.
- (b) When a major offense has been committed, an employee suspected by the Company to be guilty thereof, may be held out of service pending trial and decision only if their retention in service could be detrimental to themselves, another person, or the Company."

Clearly, suspected theft of Company property is a "major offense" under the terms of (b) above, and the retention of an employee suspected of theft "could be detrimental...to the Company." The Carrier should not be expected to expose itself to the possibility of additional theft of its property during the interim between the alleged theft of ties and the outcome of the trial. The Claimant was on disability leave between the incident and the trial, so the Carrier's exposure to possible detriment was nonexistent. The Carrier claims it was for that reason that it did not suspend the Claimant immediately after the July 10 incident. The Board finds such reason to be based upon sound business considerations and, thus, not arbitrary. There is no evidence in the record that the suspension was capricious. And finally, the Board has concluded that the August 16 suspension was not in violation of Rule 6-A-1.

Second, the Organization claims that the Carrier was arbitrary, capricious, and unjust in its dismissal of the Claimant on August 23, 1979. However, the Board has carefully studied the record in this matter and concluded that it does not support such claims. More specifically, the record does not lend credence to the Claimant's explanation of the events of July 10, 1979. The Claimant's testimony is in direct conflict with that of Police Officer Kehoe, whose testimony may be summarized as follows: He saw the Claimant in his pick up truck parked next to a van occupied by another man with both vehicles having their rear ends facing a pile of railroad ties. They got out of their vehicles and, with each man taking opposite ends of a tie, proceeded to load about four of them into the back of the pick up truck. He observed them for a few minutes more and, as they got back into their vehicles, he drove his police cruiser to where they were parked. The Claimant maintained that they were unloading the ties from the truck to the pile. During an ensuing conversation the other man got into the van and left the scene. Kehoe arrested the Claimant and, when they got to the police office, the Claimant admitted he was taking the ties to make a horseshoe pit or something of that nature.

The Carrier apparently evaluated the respective testimony of the Claimant and Officer Kehoe and determined Kehoe's to be the more credible. The Board concludes that the record as a whole supports the Carrier's determination. For example, if the entire incident were just a prank, and the Claimant never had any intention of taking the ties, why would he load them into the truck? He could have demonstrated his strength just as well by merely lifting the ties off the pile and replacing them. For this and other reasons, the Claimant's version of the events of July 10 simply doesn't ring true. Accordingly, the Board has concluded that the Carrier's charges against him are proper. Moreover, theft of employer property has long been considered by this Board as an incident of sufficient

seriousness to warrant dismissal. The Board notes the Claimant's 6 years of service but has determined that the seriousness of his offense outweighs any favorable consideration attached thereto.

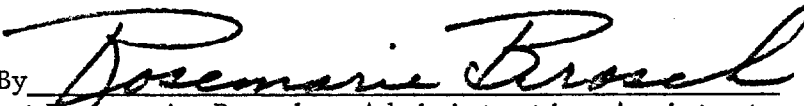
Finally, the record indicates that the dismissal was based upon the employer's legitimate right to protect its property and that it did not sweep down suddenly and unpredictably on the Claimant. He was apprised of the charges in writing long before the discipline was invoked, and did not claim ignorance of the Carrier's posture on theft of Company property. Accordingly, the Board has determined that the Carrier's dismissal of the Claimant was neither arbitrary nor capricious.

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 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this, 28th day of July, 1982.

