

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

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

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company unjustly and arbitrarily suspended from service on May 2, 1980 and subsequently dismissed Electrician Dallas R. Seagraves from service on June 3, 1980.
2. That the Chesapeake and Ohio Railway Company violated the current agreement when they failed to afford Electrician Dallas R. Seagraves a fair and impartial hearing.
3. That accordingly, the Chesapeake and Ohio Railway Company be ordered to restore Electrician Dallas R. Seagraves to service with his seniority rights unimpaired, all other benefits he would have been entitled had he not been dismissed from service and be compensated for all wages lost beginning on May 2, 1980 until reinstated to service account of the improper suspension and dismissal 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 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.

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 employes -- 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.