

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

Parties to Dispute: (Sheet Metal Workers International Association
(Washington Terminal Company

Dispute: Claim of Employees:

- 1) That, under the Current Agreement, Sheet Metal Worker, Ronald E. Mozingo was unjustly discharged from service on June 7, 1983.
- 2) That, accordingly, the Carrier be ordered to reinstate the aforementioned employe to service with all rights unimpaired, including seniority, vacation, health & welfare benefits and life insurance.

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 employes 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.

The Claimant has been employed by the Carrier as a Pipefitter at the Carrier's facility located in Washington, D.C. Following a hearing that was held on June 3, 1983 the Claimant was dismissed from service for removing lumber owned by the Carrier on May 28, 1983, which was later found in his automobile parked off the Carrier's property, in violation of General Rules N and L.

The record discloses that the Claimant acknowledged the facts which prompted the charges brought against him. On May 28, 1983 he obtained the Carrier's lumber from the Pipe Shop. He had not been authorized to remove the lumber. He then placed the lumber in his car for personal use. Accordingly, by his own admission, the Claimant committed violations of General Rules N and L. Rule N prohibits stealing "while on duty or while on Company property"; and Rule L prohibits the "unauthorized possession, removal or disposal of any material from Company property".

Remaining to be considered is the penalty that was assessed against the Claimant. The Claimant has been in the service of the Carrier for approximately five (5) years. During this period of time, he has not been disciplined for any previous misconduct. He had a positive attitude towards his work and Pipefitter Foreman B. Ellifritz considered him to be a "good worker; a good mechanic". Furthermore, the lumber removed from the Carrier's property had a value of \$45. Referring to the lumber in question, Foreman Ellifritz said that he "had seen wood like that thrown away" and he had "seen them [the Carrier] use wood like that."

In light of these considerations, the temptation is strong to reduce the penalty assessed against the Claimant. However, under the circumstances involved in this case, dismissal was at the Carrier's discretion. In this connection, leniency as a mitigating factor should be addressed to the Carrier, rather than to this Board. Accordingly, the Board is persuaded that the penalty of dismissal should not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leaver - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1985.