

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24314
Docket Number MW-23930

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Crankhand M. L. Weaver was arbitrary, capricious and on the basis of unproven and disproven charges (System File C-4(13)MLW/12-39 (79-36) J1).

(2) Crankhand M.L. Weaver shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On February 26, 1979, the Carrier directed a notice of investigation to the Claimant requesting him to attend an investigation. The letter read in pertinent part:

"You are charged with violation of Safety Rules for Engineering and Maintenance of Way Employees effective September 1, 1967, as follows:

Rule 3 - 'To enter or remain in the service is an assurance of willingness to obey the rules.'

Rule 26- That portion of Rule 26 which reads: 'Unauthorized employees and others not having legitimate Company business to transact are prohibited from entering ☐☐ ●☐✕☐☐☐☐☐ ● boot railroad offices...yards...and other properties.' And,

Operating Rule Book of Seaboard Coast Line Railroad Company effective December 4, 1978, as follows:

That portion of Rule G-1 which reads: 'Disloyalty, dishonesty ... insubordination...or concealing facts concerning matters under investigation till subject the offender to dismissal.'"

The investigation was held on March 1, 1979, and subsequent thereto the Claimant was dismissed.

The charges were preferred in connection with the Claimant's delivery of scrap ties to the George Hunt Top Soil Company. There is no dispute that the ties were removed from the Carrier's property by the Claimant and delivered to the aforementioned party.

It is the conclusion of the **Board** that while the evidence conflicts, and **there** is a substantial basis to support the Carrier's finding and **furthermore**, the defense put forth by **the** Organization fails to overcome the prima facie nature of the Carrier's **case**.

The **Organization** contends that the Carrier had a practice of **allowing** **employees** to remove old crossties unfit for the Carrier's use, provided such crossties were not sold to a third party. They contend that there **is** no evidence that the **Claimant** sold the **ties**, but received **monies** only for the labor and use of his truck involved in picking up and delivering the ties to Mr. Hunt. They assert **no value** was placed on the **crossties** delivered and **that** the **Claimant** received **no money** for the ties themselves. The **Organization** directs attention **in** this respect to the **Claimant's** testimony. The **Organization** also **•** asserts that there **was a practice**, condoned by the **Company**, of **employees** accepting money for the labor involved in delivering old ties to **non-employees**.

while the **Organization's** case is **ably** argued, it fails to **overcome** the **prima facie nature** of the Carrier's proof. Even assuming that the **Claimant** received money for **only labor**, there is convincing evidence in the record that the **Claimant** had been **specifically** and **previously warned** not to **accept any money in connection** with the ties including the delivery of ties. **Thus**, the Claimant's conduct **was** clearly **contrary** to **Company** policies and **clear** instructions given to the **Claimant**. It is **clear** that the policy of giving old ties to employees was to allow them to utilize them for personal **use** primarily and **was specifically** designed to **prevent them from taking •** dvantage of the benefit for personal financial gain. This includes gain for so called "delivery". The testimony of D. S. Blair indicated that in December, 1977, it had come to his attention that Mr. Weaver was selling ties to Mr. Hunt. Mr. Blair further testified that **after** he became aware of this, he "... **specifically** spoke with him (Weaver) and told him of Mr. Herndon's feelings that we could not, would not, let **anyone** receive **any** kind of **money** for transporting. selling, **taking tips**, or **anything**, no **matter** what you call **it**, we would not tolerate." In the **same** vein, Division **Engineer** Herndon testified **•** s follows:

"... and because of several instances which came up in year 1977, one of which involved Mr. Weaver, I set down the policy with **all** of the **Roadmasters •** d had them advise all of their forces that **under no circumstances** would **any** ties be given to anybody for **resale** or **trade** or **any** kind of **compensation** in **any** way, And I told them to make that plain to **ellof** the for-, if they wanted to give a tie to a neighbor or **somebody**, they could do it but they could not accept **any** money for it, nor **any** compensation. A case came up in 1977, involving Mr. Weaver and I personally asked Mr. Blair if he had told **all** of his **firemen** and **all** of his **men** and then I asked **him** I **says**, have you advised Mr. Weaver that he **cannot** use a cross tie or get a cross tie and give **it** to **anyone** else for **any** kind of **compensation** and Mr. Blair informed me he had."

The evidence **reviewed** above **establishes** that there was substantial evidence to support the portion of the charge relating to dishonesty. The seriousness of this charge is sufficient enough to uphold the **discharge**. The **Board** also notes that there is evidence supporting other portions of the charge.

In summary, it is the conclusion of the **Board** that the discharge is proper in light of the fact that the **Claimant** had been **specifically warned** not to engage in the **distribution** of old ties to **non-employees for profit in any form**. His conduct, **contrary** to these clear instructions, was both dishonest and **insubordinate**.

FINDINGS: The Third Division of the Adjustment **Board**, upon the whole record and all the evidence, finds and holds:

That the **parties** waived oral hearing;

That the **Carrier** and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the **Railway Labor Act**, as approved June 21, 1934;

That this Division of the **Adjustment Board** has **jurisdiction** over the dispute involved herein; and

That the **Agreement** was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third Division**

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated et Chicago, Illinois, this 14th day of April 1983.