

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24349
Docket Number SG-24168

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on Consolidated Rail Corporation:

Appeal the dismissal of John R. Jones."

OPINION OF BOARD: On December 14, 1979, the Carrier directed a notice of investigation to the Claimant which read in pertinent part as follows:

"1. Violation of Rule L, CT 400 - Rules for Conducting Transportation

'In case of danger to or loss of the Company's property, from any cause, employees must unite to protect it.

Abuse, misuse, defacing of or deliberate damage to or destruction of Company property, tools or equipment is prohibited. The unauthorized possession of, removal or disposal of, any material from railroad property or property served by the railroad is prohibited.

Property of the railroad, as well as freight and articles found in or on cars, or on company premises, must be cared for and properly reported.'

2. Violation of Rule E. CT 400 - Rules for Conducting Transportation

'To remain in the service, employees must refrain from conduct which adversely affects the performance of their duties, other employees, or the public. They must refrain, whether on or off duty, or on or off company property from conduct which brings discredit upon the company.'

SPECIFIC: Your alleged possession of December 11, 1979, of material removed from car R-Box 34866, Conrail Waybill #158356 on Railroad property, December 10, 1979." (Emphasis added)

Subsequent to the investigation the Claimant was discharged.

The testimony of Police Captain E. Hassert adequately serves as a background for the charges. He testified as follows:

"A. As on December 12, 1979, I had conversation with Agent D. S. McDevitt of the Illinois Department of Law Enforcement, at which time he stated that at 8:35 P.M. on December 11, 1979, he observed a Ryder truck in the alley in the rear of 149th Street, Harvey. Several subjects were moving furniture out of a garage and loading it into the truck. As he approached in the alley he observed these cartons were marked Ethan Allen Furniture and he identified himself as a police officer. At which time he stated one of the subjects later identified himself as J. R. Jones attempted to pull a revolver and he was placed under arrest."

There is little doubt based on a review of a transcript that the cartons were railroad property. This is not in dispute. However, while the Claimant doesn't deny loading the carts on, he does deny having knowledge that they were railroad property. He testified that he got involved because some friends had found furniture and asked him for help transporting it. He testified as follows:

"Q. Mr. Jones, how did you happen to be there?

A. I have known these guys, they are personal friends. They told me that they found some furniture that was in a field by a fire. That is all they told me. I went there to look at the furniture. While I was there Gerry came in. He said that some guy already came to look at it and wanted to put it in his apartment. Gerry drove the rental truck to Bobbies out and asked if I could lend him a hand and they told me that they would pay me for helping them load the truck. So that is what I was doing, helping them load it onto the truck."

The critical question, in the opinion of the Board, is whether the Claimant was aware or had reason to be aware that the furniture was stolen either from a shipment of the Carrier or from some other source. The Carrier suggests that there is evidence to conclude that the Claimant was aware it was stolen property; on the other hand, the Organization asserts that the record is based only on hearsay and speculation and there is no proof that he knew the furniture was from a Carrier shipment or intent to be dishonest.

It is the conclusion of the Board that there is substantial evidence to believe that the Claimant had knowledge that the material was stolen property. The record does contain hearsay evidence that the Claimant was in possession of a revolver when approached by the police and that he was subdued as he withdrew it from his pocket. While this is hearsay, the Claimant had an opportunity to question this testimony at the investigation and had full opportunity to deny having the firearm or drawing it. The record of the transcript is absent of such a denial; therefore, it must be taken as fact. Had he denied it, the value of the police captain's testimony would be greatly diminished. However the Claimant did not, thus, the Claimant's unexplained action of drawing a firearm upon being approached by a police officer is, in the opinion of the Board, substantial evidence that he was aware that his actions and involvement with the furniture

at the **time** was improper and dishonest. A person merely helping his friends, in **most** probability, **would** not pull **a firearm** when approached by a police officer. At the referee hearing before the Board, the Claimant did offer an explanation for the **gun** and its **removal from** his pocket; however, it is well established that the evidence to be considered by the Board in discipline cases must be presented during the hearing on the property.

The Claimant's action of possessing and **pulling** the revolver **from** his pocket **does** establish that **he** was aware that he was **moving** stolen property but it does not necessarily establish that the Claimant was aware that the furniture was Carrier property. **However**, in the opinion of the Board, **the** fact that it cannot be **determined** if the Claimant was aware that the furniture was stolen from a Carrier shipment does not essentially **diminish the** seriousness of his behavior. **An employee who knowingly** possesses stolen property, Carrier's property or otherwise, violates the fund-tal trust necessary for a railroad **employee** who continually works **in** the vicinity of **enormous amounts** of merchandise. Such conduct is very serious **and** discharge is appropriate.

FINDINGS: The **Third Division** of the **Adjustment Board**, **after giving** the **parties** to this dispute due notice of hearing thereon, and **upon** the **whole** record and all the evidence, finds and holds:

The 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 Agre-t 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of **April 1983**.