

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24593  
Docket Number MW-24790

**Tedford E. Schoonover**, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way **Employees**  
( Consolidated Rail Corporation  
( (former Penn Central Transportation Company)

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

(1) The dismissal of **Trackman C. E. Crofoot** for alleged 'Conduct unbecoming an **employee**' was without just and sufficient cause (System Docket **SD-570**).

(2) The claimant 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: Prior to dismissal, claimant was employed as a **trackman** with seniority date of March 5, 1975. His employment on the Carrier was Ashtabula, Ohio under Track Supervisor Ray Kloczek. He was still so employed on January 12, 1980, the date of the incident out of which his termination was based. On that date he was discovered to have built a fence on **his** property using railroad ties.

By notice of February 11, 1980, claimant was advised as follows:

"Conduct unbecoming an employee at or near 951 **Stumpville Rd.**, Jefferson, OH, leading to your arrest on January 12, 1980, for possession of stolen Conrail property, which consisted of 300 cross ties; 19 of which were new ties, and 4 of the 19 **new** ties were clearly marked **CR77KOSK.**"

At the trial hearing, claimant gave a somewhat incredulous account of how he came into possession of the ties and his subsequent actions in appropriating them to his **own** use. He claimed he bought them from an unknown person at a bar; a person he never saw before or since. The delivery occurred at 9:30 at night when he could not see that some of the ties were new with Carrier markings. However, the next morning, he saw the markings identifying the ties as new and worth far more than he allegedly paid. He made no effort to inform proper Carrier Officers but proceeded to use the ties for his own purposes even though as a **trackman** he knew of the worth of ties. He suspected they might be stolen property but failed to take prudent and reasonable actions in protecting himself as an employee. In the circumstances we agree that Carrier had reasonable and just cause for terminating claimant's employment. The seriousness of the matter is illustrated by the fact criminal charges were filed against claimant and referred for consideration and action by a grand jury.

Our view of this case are in accord with First Division Award 16785 by Referee **Loring**:

"In these investigations as to whether a discharge was wrongful, the Carrier is not bound to prove justification beyond a reasonable doubt as in a criminal case or even by a fair preponderance of evidence as does the party having the burden of proof in a civil case. The rule is that there must be substantial evidence in support of the Carrier's action."

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:

  
Nancy J. ever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1983. --