

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24993
Docket Number MW-25038

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Trackman R. Bennett for alleged 'unauthorized removal of Company material from Company property' was without just and sufficient cause and on the basis of unproven charges (System File C#29/D-2516-1).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, at the time of the occurrence giving rise to the claim herein, had been in the service of the Carrier as a track laborer for about six months. On August 26, 1981, he was dismissed from Carrier's service for the unauthorized removal of cross ties from Company property. Following his dismissal, Claimant requested a hearing in accordance with the provisions of the applicable agreement. The hearing was conducted on August 26, 1981, following which the dismissal was affirmed. A transcript of the hearing of September 21, 1981, has been made a part of the record.

Rules 700 and 700(B) of Carrier's Operating Rules for Employes in the Maintenance and Structures Department read:

"700. Employes will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations.

* * *

700(B). Theft or pilferage shall be considered sufficient cause for dismissal from railroad service."

In the hearing conducted on September 21, 1981, Carrier's Special Agent testified that in investigating a report of missing ties on August 14, 1981, he contacted Claimant at his home and that there were approximately eighty used ties on Claimant's property, behind his house, and Claimant contended that the Roadmaster had indicated it was all right for him to take the ties. The Roadmaster testified in the investigation that he had not given Claimant permission to remove any ties, but that persons must have the proper permit for the removal of any company property. There was presented in the investigation a permit issued to the Claimant on July 25, 1981, apparently by the Roadmaster's

clerk, authorizing the removal by Claimant of ten ties. The clerk testified that if Claimant desired to remove ties after July 25, 1981, he would have been required to obtain another permit. Claimant admitted having removed some eighty or more ties from locations designated as Monona or Monona Hill between August 1st and August 10th, stating that he understood that he had verbal authorization from the Roadmaster and the Roadmaster's clerk. The only permit introduced into the record was for the removal of ten ties, as previously mentioned.

With Claimant having requested and received the proper permit for the removal of ten ties, any contention on his part that he did not consider a formal permit necessary for the subsequent removal of a substantial number of ties, is simply not persuasive. His later contention in the investigation that he had verbal permission from his foreman to remove the other ties, seems to have been an after thought. No mention had previously been made of the involvement of the foreman. The hearing was held at the request of the Claimant and if he was actually relying upon alleged permission of his foreman to save his job, it would only appear logical that he would have requested that the foreman be present at the investigation, or he would have told some supervisory officer of the involvement of the foreman before the hearing.

As to Claimant's contention that he had not been issued a rules book and did not know that the removal of company property without proper permission could possibly result in termination simply strains imagination. Certainly he knew the difference between right and wrong and that he simply could not take property that did not belong to him.

As to the contention of the Carrier on the property that the claim was not timely progressed under the applicable time limit rules, we find that the claim is properly before the Board. See Third Division Awards Nos. 17591 and 19601 involving the same carrier, as well as Awards Nos. 24542 and 23346.

Based on the record, we are convinced that Claimant did remove the ties from Carrier's property without proper permission, and the claim will be denied.

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:

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.

Award Number 24993
Docket Number MW-25038

Page 3

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.