

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25164
Docket Number MW-24754

Ida Klaus, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railway Company)

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

(1) The suspension of Messrs. L. D. Rogers, T. L. **Egson**, C. L. Jones, L. J. Hampton, S. L. Jones and R. L. **Holdaway** at the close of work on April 15, 1981 for alleged violation of "Rule 181" was without just and sufficient cause, unwarranted and on the basis of unproven charges (System File **B-1945/MWC** 81-10-g).

(2) The claimants' record shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered.

OPINION OF BOARD: The claim protests the suspension of the foreman and the five members of the B&B gang for making an unauthorized sale of railroad ties, in violation of Maintenance of Way Rule 181. All Claimants were reinstated upon making appropriate restitution to the purchaser, a pre-condition imposed by the Carrier. The claims are for compensation to each **employee** for wages lost for the period of suspension.

Rule 181 provides in pertinent part:

"Property of the railway must not be sold, loaned, borrowed or in any way disposed of without proper authority."

The Claimants have acknowledged that they sold the scrap bridge ties to an outside purchaser and divided the proceeds among themselves. All have asserted that at the time of the sale and distribution of the moneys they believed their action was authorized by the General Foreman's instructions to 'get rid of', or "dispose of", the ties.

The Organization contends that no violation of the rule has been shown. It argues that the General Foreman's broad instruction to dispose of the ties in effect authorized the Claimants to choose the method for doing **so**, and they properly chose to sell them. If he did not intend to authorize a sale, the Organization adds, the General Foreman should have been specific in his instructions.

The Carrier contends that the evidence establishes a violation of Rule 181 and supports the disciplinary suspensions imposed.

On the record before it, the Board finds a clear violation of Rule 181 by all the Claimants. We see **no** acceptable basis for finding that the Claimants **were** authorized, or genuinely believed they were authorized, to sell the ties and keep the money. As they acknowledged, they were aware of the rule and also knew that the customary way to dispose of scrap bridge ties was to throw them away. They gave no good reason for not disposing of the ties in **the** usual way in this instance. We must reject their unconvincing explanation and the Organization's untenable argument. The Claimants were properly subject to discipline.

We find that the measure of discipline imposed was fair and reasonable. The Claimants did not deserve a lesser measure of discipline for returning moneys they were required to pay back as a condition of their reinstatement. The claim must be denied.

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. Dover - Executive Secretary

Dated at Chicago, Illinois this 30th day of November 1984.