

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25602
Docket Number NW-25926

John W. Gaines, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

(1) The dismissal of **B&B** Mechanic A. G. Six for alleged "Theft of Conrail property at **Mingo Jct., Ohio** on Wednesday, August 31, 1983" was without just and sufficient cause and on the basis of unproven charges (System **Docket** CR-364-D).

(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: Carrier by notice of September 9, 1983, instructed Claimant to attend a hearing **concerning** allegations of theft on August 31, 1983, of Carrier's lumber.

A hearing was accordingly held on September 15, 1983, whereupon Carrier subsequently dismissed Claimant from service.

On that Wednesday, the date of the alleged theft, Claimant observed his Foreman removing **lumber** from stock in the Carpenter **Shop** on Carrier's premises and unloading it to an awaiting truck, the private truck of the **Foreman**. In sequence, Claimant similarly removed more of the lumber and likewise loaded it onto the Foreman's truck. Then in a simple matter of minutes in the sequence, and without participation of Claimant, his Foreman drove the loaded truck away from the premises.

Carrier. **by** a **convincing** Conrail Police Record and corroborating Police **testimony, introduced** substantial evidence of the above events witnessed in their sequence. **Claimant** denied nothing, and admitted to several of the essential details in his **testimony**. There is nothing of record to show that he, anonymously or not, ever called any phase of the matter to Carrier's attention.

Claimant had two things to say in **respect** of his taking, during **regular** employment hours, of his employer's lumber and transferring it in **effect** into the private custody and control of his Foreman. Claimant testified, first, that the Foreman ordered **him** to so participate and, **second**, that the value or not of the lumber taken and transferred by Claimant lies all in a person's viewpoint.

We cannot minimize the fact that dishonesty of the **Employee** poses a grave threat to the Carrier in the matter of **properties** all either owned by, or entrusted by its **Patrons** for safe handling to the **Carrier**. Either way, the tremendous diversity in such property is **altogether** the Carrier's responsibility and cause for extreme vigilance.

We find just and sufficient cause, on basis of charges as proven and as essentially admitted, to warrant Carrier to apply disciplinary measures here. Following rightful orders from the **Foreman** was the extent of Claimant's duty in that respect, coupled with the **complementary** duty of protecting property and reporting observed mishandling or misappropriation of same. As to **valuelessness** or not of the lumber taken, a technically qualified witness of Carrier was definite in his assessment that the lumber was construction grade stock and valued as such.

There are matters in extenuation and mitigation deserving of note here, we feel. Claimant cannot be ranked as co-conspirator or partner operating with the Foreman. Seen at worst, Claimant held no **more** than a subordinate position to the criminal act, basically as **accomplice** willing or unwilling. We fault Claimant in large part on basis of simply exercising extremely poor judgment, fault enough in him but correctable. His seven years in service **show** a record clean of any prior disciplinary problem.

Dismissal under these circumstances is excessive. **However**, we will deny Claimant both his claim that his record be cleared of involvement and his claim that he **be** compensated for back pay.

Claimant must be made aware that if he is involved in any further like incident his dismissal would be imminent. And both he and Carrier should understand that the Board does not consider him innocent of the charge or that the resulting discipline by the Carrier was unjustified.

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 discipline was excessive.

A W A R D


Claim sustained in accordance with Opinion.

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By Order of Third Division

ATTEST:


Nancy J. Devan - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.