

NATIONAL RAILROAD AJUSTMENT BOARD

THIRD DIVISION

Award Number 25855
Docket Number MW-25836

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Elgin, Joliet and Eastern Railway Company

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

1. The dismissal of Mechanic H. Crawford for alleged 'theft' and 'falsification of Company documents' was without just and sufficient cause and on basis of unproven charges. (System File 142-293/Case MM-3 -83/SAC-3-83).

2. The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant, Mr. H. Crawford entered service with the Carrier in June, 1964. At the time of the disciplinary action appealed in this case, Mr. Crawford was employed as a Motor Car Repairman at the Kirk Yard, Gary, Indiana.

The Claimant was notified to attend a Formal Hearing by letter dated February 14, 1983. The letter stated:

"Report for a formal hearing to be held at 10:00 A.M., Friday, February 18, 1983 in the office of the Assistant Supervisor, Work Equipment, at the Gary Truck Garage, Kirk Yard, Gary, Indiana.

This hearing, is being convened to develop all facts in regard to the allegation that on January 29, 1983 you (1) were observed applying company materials to your personal vehicle constituting theft, and (2) falsified company records regarding your work activities for January 29, 1983.

Should you desire representation and witnesses in your behalf, as set forth in our current agreement, please arrange for same.

Sincerely,

/s/
D. F. Fancher, Assistant
Supervisor - Work Equipment"

By mutual agreement, the Formal Hearing was postponed until March 1, 1983. On March 1, 1983, the Formal Hearing was held at the Gary Truck Garage, Kirk Yard, Gary, Indiana. Through a letter dated March 4, 1983, Mr. Crawford was notified by the Carrier that as a result of the evidence adduced at the Hearing, the charges against him were sustained and he was assessed the discipline of dismissal as follows:

"Mr. Harold Crawford

By letter dated February 14, 1983, D. F. Fancher, Assistant Supervisor - Work Equipment, charged you with the following:

1. Theft of company property, in that, on January 29, 1983, you were observed applying company materials to your personal vehicle.
2. Falsification of company records regarding your activities for January 29, 1983.

Having carefully reviewed the facts developed in the hearing held March 1, 1983, I find both charges sustained. The theft of company property and falsification of company documents are both dismissable offenses. Accordingly, you are dismissed from the service of this carrier effective this date.

/s/
Craig R. Casey
Manager, Work Equipment"

Contrary to the Organization's contention that the charges of theft and falsification of company documents are "unproven", we find substantial evidence in the record that supports the findings of the Carrier. The record shows that Mr. Crawford's Supervisor, Mr. Fancher, testified at the Formal Hearing that after reviewing some records he suspected gasoline and oil was being misused by Carrier Employees during the weekends. As a result of Mr. Fancher's suspicions, the Carrier dispatched Special Agent D. F. Sawicke of the Carrier's Police force to the Kirk Yard Truck Garage in Gary on Saturday, January 29, 1983. Mr. Sawicke's assignment was to observe any possible employee misconduct. The record contains both Mr. Sawicke's testimony and his handwritten reports in which his direct observations of the Claimant on January 29, 1983 are described. Mr. Sawicke testified at the hearing that he observed Mr. Crawford thoroughly wash his personal vehicle, place at least 5 gallons of Company fuel in the tank of his vehicle and clean the engine area of his vehicle. In addition, Mr. Sawicke testified that he observed the Claimant drain the oil from his vehicle and remove the oil filter. According to Mr. Sawicke, the Claimant then installed an oil filter he took from the Company parts room and replaced his oil with oil taken from the Company oil dispenser. All these activities took place inside the Kirk Yard Truck Garage between 11:00 A.M. and 1:15 P.M. on Saturday, January 29, 1983.

The facts set forth above were not denied or refuted by Mr. Crawford. Rather, when questioned about these events at the Formal Hearing, he could remember pulling his personal vehicle into the garage on January 29, 1983, but could not remember working on his vehicle, using Company fuel or installing a Company oil filter in his vehicle:

"Casey: In regards to Officer Sawicke's testimony, did you, in fact, bring your own personal vehicle inside the garage on this date?

Crawford: Yes, I did. I brought it in. When the weather is cold, I usually bring it in. That way, it will stay warm and make sure it starts and stuff. And I did bring it in and park it inside, yes, I did.

Casey: Did you in point in question, spend somewhere between 11 o'clock and 1-1:30 doing work on your personal vehicle?

Crawford: I do not recall the incident right now, no. I really don't remember."

Given the Claimant's inability to refute the charges and his seemingly inconsistent memory of the events of January 29, 1983, the Board finds that the facts set forth above which were developed through Mr. Sawicke's direct observations constitute substantial evidence in support of the Carrier's charge against Mr. Crawford for theft of Company property.

Furthermore, we find substantial evidence in the record to support the Carrier's claim that Mr. Crawford misrepresented his working hours and activities for January 29, 1983 on Company documents. Work forms contained in the record indicate that Mr. Crawford worked eight full hours on a compressor and a truck on January 29, 1983. These forms do not indicate the hours during which the Claimant worked on his personal vehicle, nor do they reflect the use of any company materials. We find that the information included in the work forms conflicts with the facts related by Special Agent Sawicke. Consequently, the Board finds that the Carrier's charge that Mr. Crawford did not relate his actual activities in these forms is supported by substantial evidence.

The Board has consistently recognized the gravity of a charge of theft or dishonesty. We find that the discipline of dismissal in this case was neither arbitrary, capricious nor excessive.

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 Employes involved in this dispute are respectively Carrier and Employes 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

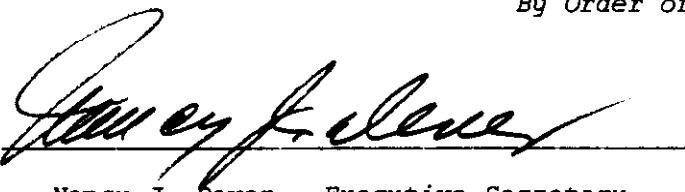
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.

