

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25955

Docket Number MW-26140

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

(1) The dismissal of Extra Gang Foreman R. Corona for alleged 'violation of General Notice, General Rule B, General Regulations 700, 702(B), and 708' was without just and sufficient cause and in violation of the Agreement (System File 5-19-12-15-55/013-210-C).

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

OPINION OF BOARD: Carrier suspended Claimant from service commencing July 14, 1983, pending an Investigation into his conduct in disposing of Carrier's Railroad ties.

Following the Investigation, Claimant was dismissed for misappropriation of the ties, i.e., taking money and selling the ties in private sale.

There was sufficient evidence identifying Claimant, and linking Claimant to the private sale of the ties, and to his personal receipt of the sale price in cash.

It was admissible evidence for the Carrier to introduce the written statement of an intermediary dealt with by Claimant in transacting the sale and also to call witnesses, including a Special Agent, who testified they were witness to the intermediary when he signed that written statement to the effect that he personally gave Claimant the tie-sale payment in full.

Upon personally picking out Claimant as an individual in a group, at a distance from the group, and readily recognizing Claimant's picture in a group photograph later provided by the Special Agent, the intermediary completed a three-way, positive identification of Claimant at a final personal visit paid to the intermediary by Claimant.

Claimant was held out of service for ample cause. Misappropriation of Carrier property carries the threat of its continuing, and its seriousness entitles Carrier to step in promptly to stop it. It is dishonest and accepted as a clear violation of Carrier's Rules. (Third Division Award 24566.)

We have considered various procedural arguments raised and find they are without basis.

In light of the character of the this offense and state of the service record before us, we deem as appropriate the discipline of dismissal.

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

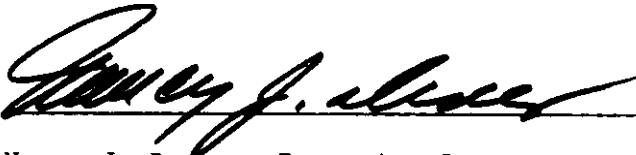
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.