

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26002
Docket Number MW-26123

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Railroad
(former Colorado and Southern Railway)

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

(1) The dismissal of Trackman J. A. Romero for alleged violation of Rules 564 and 575 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File F-43-83).

(2) The claimant shall be reinstated with seniority and all other rights and benefits unimpaired, his record cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed following a Hearing into his

"alleged intent to destroy Company property when Section Foreman D. D. Noel observed your placing a nail underneath the back right tire of Company Vehicle No. 21072 on August 22, 1983, at approximately 10:00 a.m., while you were assigned as a section laborer to Trinidad Section East."

Claimant denies such intent on his part, contends he is not implicated, and disputes the matter of his presence in fact on the right side of Truck Vehicle 21072.

Under cross examination about a building nail that indisputably was found set against the truck's back right tire, diagonally in place beneath it, the Foreman testified in part, "... I had the nail in my hand; and it was his reaction that convinced me that he definitely had something to do with it because of his reaction. He was defensive."

The Foreman's belief that Claimant had definitely implicated himself was not based on the fact of an offense but on reaction observed in Claimant. The Hearing Officer's assumption of Claimant's guilty act as charged was based on the Foreman's testimony.

Awards cited in the Submissions involve credible but conflicting testimony, the bare question of one against one; they are not applicable. For credence to attach to either one here, we need, but lack, the necessary ancillary proofs to support one position or the other. Claimant's link to an accomplished act of intended vandalism is left in doubt.

So charges of the exact offenses as brought, and finding of guilt, against Claimant must all fail because of failure in the case to produce substantial evidence of probative value.

We will award that Claimant be reinstated with seniority and other rights and benefits unimpaired, that he be compensated for wage loss sustained, and that his record be cleared.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1986.

