

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company

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

(1) The dismissal of Assistant Track Foreman E. G. M. Villarreal, Truck Driver R. M. Padilla and Laborer T. J. Hope for

'...alleged acts of dishonesty and dis-loyalty to this Carrier on/or about 3:30 PM, Monday, March 25, 1985, concerning your unauthorized alleged involvement and/or participation in removing items of food from trailer IML 28348 in the care of Clearwater Trucking Company at the railroad Freight House area on Second South Street, Salt Lake City, during regularly assigned duty hours and using Company vehicle No. 333 without permission or authority....'

was without just and sufficient cause and on the basis of unproven charges (System Files D-19-85/MW-15-85; D-20-85/MW-16-85 and D-21-85/MW-17-85).

(2) The claimants shall be reinstated with seniority and all other rights unimpaired, the charges leveled against them shall be cleared from their records and they shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants Villarreal, Padilla and Hope held the positions of Assistant Foreman, Truck Driver and Laborer, respectively, and were assigned to the Carrier's Salt Lake City Section Gang headquartered at Salt Lake City, Utah. By charges dated March 27, 1985, hearing held on March 29, 1985, and by letters dated April 4, 1985, Claimants were dismissed from service for acts of dishonesty and disloyalty concerning the removal of items of packaged food from a trailer.

The record shows that on March 25, 1985, Claimants were replacing ties near the Carrier's freight house in Salt Lake City, Utah. Claimants were working near an area of open docks leased by the Clearwater Trucking Company. On the date in issue, damaged boxes of packaged food items were in some of the Clearwater trailers parked in the area. Clearwater eventually sells this merchandise for salvage.

Villarreal admittedly removed packaged food items from a Clearwater trailer without permission from Clearwater and placed the boxes in one of the Carrier's trucks. Padilla asked Villarreal if he could have some of the items and Villarreal obliged Padilla's request. Hope was asked if he desired to have some of the merchandise and some of the goods were also given to him. Both Padilla and Hope acknowledged that they had seen similar items as those offered to them either in the area of the Clearwater trailers or in the trailers. Subsequently, Carrier's Special Agent S. L. Broussard recovered the items from each of the Claimants' houses.

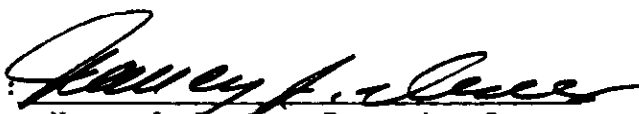
Substantial evidence in the record supports the Carrier's conclusion that Claimants engaged in acts of dishonesty as charged. Dishonesty is an offense subjecting the offending employee to dismissal. Third Division Awards 22745, 22387, 21323. With respect to the contentions of Claimants that they were under the impression that the items were discarded or that they did not know they were receiving stolen goods, even though the record does not support their contention they certainly had to know the difference between right and wrong and that they could not take property that did not belong to them. Third Division Award 24993.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.