

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

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 District Truck Operator M. R. Guenther for alleged violation of Rules L, 607, 609, 611, 613 and 4410 was without just and sufficient cause and in violation of the Agreement (System File D-56/013-210-G).

(2) District Engineer W. E. Wimmer failed to disallow the claim presented to him by Assistant Chairman J. V. Larsen on November 4, 1985 as contractually stipulated within Rule 49(a)1.

(3) As a consequence of either or both (1) and/or (2) above, District Truck Operator M. R. Guenther 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."

FINDINGS:

The 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.

The Claimant was dismissed from service following an Investigation held on November 13, 1987. In a letter dated October 30, 1985, Carrier wrote

"...Special Agent Dean stated he accompanied Detective Shepro on October 17, 1985, in a search of your residence in connection with a burglary case being investigated by the LaGrande Police Department. During this search, a large amount of identifiable Company property was seized. In addition to this property, other items identified by you to

have been purchased in the name of the Union Pacific Railroad Company with Field Purchase Orders, or other means, were also seized and secured by the LaGrande Police Department as evidence.

Further investigation of all Field Purchase order transactions initiated by you uncovered numerous questionable transactions involving merchandise and supplies for your apparent personal use, including petroleum products, leather gloves, carbide cutting discs, weed killer and Company machinery for use in ranch operations of family members. Some of these items allegedly served as repayment for numerous cash loans made to you over the years. Material and supplies were also traded in connection with vehicle purchase. You apparently set up a corporation or business known as Gudes Welding and Repair, and worked on the UPRR's Gelco fleet and equipment utilizing Company material and items purchased through Company credit to help support this business.

In addition, it has also been alleged that you were involved in removing numerous rolls of barbed wire and steel fence posts from Company property and tool and storage cars in the LaGrande Yard. The property was, in turn, sold to a family member.

Further, information has been provided that on numerous occasions in the past, you used UPRR Company boom truck (District truck) in connection with your firewood cutting business that you and your son, Marvin, jointly operated out of your mother's garage at 402 Lane Street, LaGrande, Oregon.

As a result of the above being brought to our attention by the Special Service Department on October 18, 1985, you were removed from service effective that date under the provisions of Rule 48(o) of the current working agreement pending hearing and investigation.

A further investigation on October 25, 1985, by Special Agent Dean resulted in the Special Service Department seizing as evidence, an 18" x 18" x 24" metal toolbox removed from Company boom truck 1915-62596, found mounted and welded to your personal International Harvester Model #C01600 Lodestar truck, which you use in your firewood business. Company property recovered to date has an estimated value in excess of \$5,000.00, with investigation still continuing and further evidence to be produced at time of formal hearing.

The above allegations indicate a violation in full, or in part, of General Rules A, B, D, L, 607, 609, 611, 613, 621, 815 and 4410 of Form 7908, Safety, Radio and General Rules For All Employees, Revised 4/85."

The Organization has raised a number of procedural arguments concerning the handling of this case, both prior to the Investigation and at the Investigation itself. The Board finds nothing in the record to show the presence of any procedural errors that were so serious as to void the assessment of discipline. At the same time, we find more than adequate support in the record to sustain the charges, ranging from evidence of Claimant's use of a Carrier truck on weekends for personal benefit to the presence of Carrier property in his home and in the homes of relatives, as well as evidence of Claimant's inappropriately charging goods to the Carrier.


We note that Claimant was previously reinstated to service on a leniency basis. Under the circumstances present here, the discipline imposed cannot be considered arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.