

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company (UP):

On behalf of D. G. Davis for restoration to service and payment of all time lost beginning April 25, 1986, account of Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 68, when it did not afford him with a fair and impartial investigation on May 2, 1986 and assessed him with excessive discipline. Carrier file No. 013-220-D."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 were given due notice of hearing thereon.

Claimant was discharged from Carrier's service on March 22, 1985, for transporting Company fuel in his personal truck and selling it for personal gain. Claimant was reinstated on a leniency basis, with the understanding that he would be a probationary employee for twelve months and that any incident of theft would cause him to revert to his prior status of discharge.

On April 24, 1986, Claimant was notified to attend an investigation into his alleged violation of his reinstatement agreement. Specifically, Carrier contended that Carrier property was discovered at Claimant's home on April 23, 1986, during an investigation into a theft from a Carrier van. Claimant was not authorized to have the items in his possession.

The Board has reviewed the entire record of the case, including the transcript of the investigation. That record reveals that there was sufficient probative evidence produced by Carrier to sustain the charge. Although the Organization maintains that Claimant was unaware of Carrier's policy regarding the use of Carrier equipment by employees and that the items in Claimant's possession had been there prior to the merger of the Western Pacific Railroad and the Union Pacific Railroad, we note that Carrier's dismissal letters call for the return of all Carrier property. Thus, Claimant was on notice, at least by 1985, that he had no right to have Carrier property in his possession.

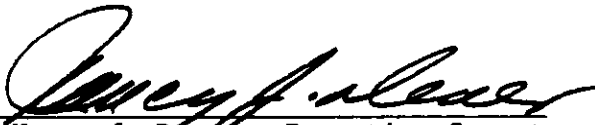
Claimant's violation of the reinstatement agreement is clear. Under the circumstances, we have no alternative but to uphold Carrier's decision.

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 2nd day of March 1989.