

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The thirty (30) days of suspension imposed upon Foreman J. F. Murter for alleged violation of '... RULE V ... RULE Y ... RULE I, NATIONAL RAILROAD PASSENGER CORPORATION, RULES OF CONDUCT ...' and upon Lineman E. F. Gilliam for alleged violation of 'RULE H ... RULE V ... RULE I' was without just and sufficient cause and on the basis of unproven charges (System Files NEC-BMWE-SD-809D and NEC-BMWE-SD-806D).

(2) The claimants' records shall be cleared of the charges leveled against them 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 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 waived right of appearance at hearing thereon.

The circumstances leading to this dispute arose during the night of November 18-19, 1983, when Claimants were called to clear ET wires which vandals had cut and allowed to fall on a Conrail train. After the wires had been cleared, Claimants proceeded to a junk yard, Clinton Metals, to dispose of the scrap wire. As a result, Claimants were disciplined for unauthorized sale of such scrap wires.

The Organization contends that Carrier's imposition of discipline was improper. It asserts that Claimant elected to take the scrap wire to the junk yard for disposal instead of leaving it available for thieves. Since Carrier has not presented any evidence to support the contention that Claimants improperly disposed of the wire or had any dishonest intent in so doing, the Organization requests that the Claim be sustained.

Carrier, on the other hand, insists that the employees attempted to appropriate the monies from the sale of the scrap wire for their personal use and it was only because of a police investigation that they developed a story to substantiate their behavior. Under these circumstances, Carrier argues that Claimants were properly found guilty as charged. In light of their employment records that reveal no previous discipline, Carrier insists that the thirty (30) day suspensions were lenient. Thus, for the foregoing reasons, Carrier asks that the Claim be denied.

After reviewing the record evidence, it is clear that the essence of Carrier's charge involves dishonesty for the unauthorized sale of scrap wire. To prove dishonesty, Carrier must show substantial evidence of an intention on the part of Claimants to act in a dishonest manner. No such evidence has been produced by the Carrier in the record.

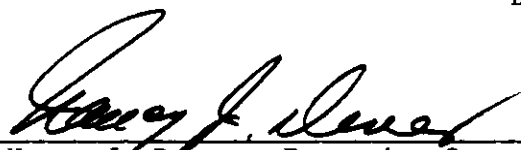
However, although the evidence is not sufficiently convincing to satisfy the Board that Claimants are guilty of dishonesty, discipline must be imposed for the improper manner in which they handled the circumstances. Clearly, Claimants acted improperly. They knew so. They are culpable. In all, we are persuaded that the discipline of Claimant Murter shall be reduced to a 20 day suspension, and Claimant Gilliam to a 15 day suspension for their proven misconduct.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1989.