

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Missouri-Kansas-Texas Railroad Company

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

(1) The dismissal of Mr. L. K. Stojanik for alleged violation of Rules 607 and 609 of the Missouri-Kansas-Texas Railroad Company and Rule 613 of the 'Safety, Radio and General Rules for All Employees' was unwarranted, unjust, and in violation of the Agreement (System File 400-30/880441).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired, he shall be compensated for all wage loss suffered and he shall be reimbursed for any medical expenses incurred by himself or his dependents which would have been paid through his group policy absent his dismissal."

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.

This is indeed an unfortunate case. Here we have an individual who had almost 10 years of service and seniority with the Carrier and who knew what the Company's rules were relative to CONDUCT (Rule 607), CARE OF PROPERTY (Rule 609), and CREDIT OR PROPERTY (Rule 613). At the formal hearing, when asked:

"Q. Are you familiar with and do you understand the rules and their requirements with which you are charged with violating in this hearing/"

he answered, "Yes."

And yet, this 10-year employee elected to come on the Carrier's property at a time and on a day when he was not scheduled to be on the Carrier's property and, without so much as a "by-your-leave" from any Carrier representative, removed - for his own use - material which belonged to the Carrier. He admitted this to the Assistant Roadmaster. He admitted this to the local police. He admitted this at the on-property hearing.

He now asks this Board to forgive and forget. He says that others have done such things in the past and Management has turned its head. However, he does not offer one single incident by name, date or location to substantiate this allegation.

This Board has studied the entire record which has been presented and has considered all of the arguments which have been advanced by the parties.

Where, as here, there is an admission of guilt, there is no need for further proof. Where, as here, there is no mitigation of the admitted guilt, this Board is without power to reverse the discipline as assessed by the Carrier. The precedent in this regard is so overwhelming as to preclude the necessity of numerous citations. Third Division Awards 22840, 24591, 24993 and 25164 are but a few of the plethora of Awards on this subject. There is no basis in this case to find that Claimant had any right to believe that he could come on to the Carrier's property on his off-day and remove without anyone's authority the Carrier's material intended for his own personal use. The discipline as assessed is warranted. The claim for reinstatement is denied.

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 7th day of August 1990.