

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

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

(1) The dismissal of Section Laborer J. A. Sanchez for alleged theft of Carrier's property was harsh, unjust and excessive (System File C #04-89/800-16-B-80 CMP).

(2) The Claimant shall have his record cleared of the charge leveled against him; he shall be restored to service with seniority and all other rights unimpaired and he shall be paid all wage loss suffered and be reimbursed for all health and welfare costs incurred by him during the time he has been withheld from service."

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 employee 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 worked as a Section Laborer on the Bensenville Section. At the time of his discharge, he had ten (10) years of tenure with the Carrier.

On November 4, 1988, the Captain of the Police for the Soo Line Railroad, received a call from the personnel office indicating someone there wanted to talk to him. The individual alleged that an employee of the Soo Line, who he subsequently identified as the Claimant, was in possession of Soo Line property which he kept inside his garage. The Captain, after personally speaking with the accuser, accompanied him to the aforementioned location. There he found tools and other equipment, some of which were clearly identified as Soo Line property.

Subsequently, the Claimant was called into the police office and advised they were aware of the contents of his garage and that the Carrier wanted their equipment returned. The Claimant cooperated and the equipment was retrieved. By letter dated November 9, 1988, the Claimant was notified he was being discharged because, "you had various items owned by the Soo Line Railroad Company stored on your property. . . .The investigation revealed that you had removed these items from the railroad right-of-way, which is company property." The Claimant was simultaneously advised he could request a hearing, which he did on November 14, 1988.

Following the hearing, the Carrier sustained the discharge.

The Organization points out that the Carrier did not charge the Claimant with theft, but with storing Company property in his garage. They urge the evidence shows the Claimant never intended to keep the items he found along the right-of-way. They further argue that the Carrier failed to prove the Claimant intended to steal from the Company and that was the reason they had not charged him with theft in the first place. Further, they insist, on the Claimant's behalf, that after he found the items, he never got around to returning them because he was afraid of getting into trouble. Therefore, absent proof of any wrongdoing, the Claimant should be exonerated.

The Carrier contends it doesn't matter whether the Claimant was originally charged with theft or not. The fact is, the Claimant over a two year period, had in his possession equipment which was clearly identified as belonging to the Carrier. Not once during this time did he attempt to return it or ask permission to keep it. His actions, in this regard amount to theft. Discharge is an appropriate penalty for stealing Company property.

As in other cases, there is little if any dispute regarding the facts of this case. The Claimant admits to having in his possession Carrier property which he had removed from the Carrier's right-of-way over a two year period and had stored in his garage. This Board does not find credible his contention that he wanted to return the property, but was afraid of the ramifications. Perhaps we could find his position plausible if he had ever before had problems returning items or if he had at any point inquired about the situation, or even if he had only had the equipment in his possession a short time. If the Claimant was actually afraid to return equipment he found, he had alternatives over the two years. He could have stopped picking up the equipment when he found it. He could have advised his Supervisor of its location. He could have asked someone in authority what he should do when he found such equipment. He could have described the scenario and asked if it was appropriate to keep tools he found. He did none of these things. His lack of effort in this regard, belies his explanation.

As others have opined in previous decisions before this Board, the Carrier has a right to expect employees who find tools along the work sites to either return them to the Carrier or allow them to remain where they are found, depending on the nature of the equipment. Clearly, it isn't like walking down the street and finding a lost article. On Carrier property there is generally no doubt of ownership, especially when the tools are identified. Certainly finding and keeping these items for your personal use is inappropriate. It amounts to theft and is justifiably punishable by discharge.

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 25th day of June 1991.