

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30809
Docket No. SG-31208
95-3-93-3-239

The Third Division consisted of the regular members and in addition Referee M. David Vaughn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Illinois Central Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Railroad:

Claim on behalf of R. T. Pleasant for reinstatement to service with seniority unimpaired, with compensation for all lost time and benefits, and discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rules 34 and 35 (c), when it failed to provide the Claimant with a fair and impartial hearing and then imposed the harsh and excess discipline of dismissal from service." Carrier's File No. 135-296-3 Spl. BRS File Case No. 9009-IC.

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 herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by the Carrier as a Signalman. He had 20 years of service. Claimant was assigned to Mobile Signal Gang No. 2324.

Part of Claimant's duties included installing and replacing copper wire. Left over from jobs were pieces of the wire. Claimant took the wire and sold it to scrap dealers. Between September 1991 and May 1992, he sold 2,600 pounds of copper, most of which came from the Carrier, and received over \$2,000.00 in payment. Claimant acknowledged that he sold the copper belonging to the Carrier, and he conceded that he lacked permission to do so.

Claimant stated that his previous supervisor had instructed him simply to throw left over copper "in the weeds" as not being worth recovery and that he had understood the copper to be scrap. He denied taking any copper which would not have been thrown away. He denied knowledge of any requirement to turn in scrap copper; and he asserted that other employees also took scrap copper for sale.

Claimant's supervisor denied that the copper was to be discarded or made available to employees as scrap. He stated that the proper procedure is to return the scrap, place it in a scrap bin and give it to the Material Department for disposal.

The Carrier summoned Claimant to an Investigation held June 1, 1992 to develop facts and determine responsibility in connection with the conversion of the copper. At the Hearing the above facts were adduced.

The Carrier determined Claimant guilty of the charges and dismissed him from service. The Organization protested the Carrier's action. The claim was progressed in the usual manner, but without resolution. It was then brought to this Board.

The Carrier argues that Claimant's admission of guilt of the offense satisfies its burden of proof and leaves only the question whether the Carrier acted arbitrarily and capriciously in imposing the penalty of dismissal. It asserts that theft is universally established as a dismissable offense. The Carrier urges that the Board should not substitute its judgment for that of the Carrier in assessing discipline. It denies that it failed to afford Claimant a fair and impartial Hearing and points out that the Organization's claim, in this regard, is not supported by specifics. The Carrier contends that the Organization's arguments are in the nature of leniency, which is a matter for the Carrier and not the Board. It urges that the claim be denied.

The Organization argues that Claimant did not know that taking the copper was in violation of the Carrier's Rules, in light of the treatment of the wire, the lack of instructions as to its disposition, the practice of not turning the wire in and the fact that other employees also took wire, without being punished. The Organization argues that the Carrier's failure to enforce the Rules consistently, the absence of proven wrongful intent on Claimant's

part, his cooperation in the Investigation and his long service render the penalty of dismissal unreasonable, harsh and excessive and punitive, rather than rehabilitative. It urges that the claim be sustained.

Claimant's admission that he took and sold the copper establishes his guilt. The copper belonged to the Carrier, and Claimant was not entitled to take it in the absence of clear permission. Claimant lacked such permission, and the Carrier's policy required a different procedure. Claimant's explanations that others did the same and that the Carrier did not always follow its own policy are not only self-serving and unsupported, but, even if accepted, would not justify Claimant's actions. Indeed, the fact that Claimant was able to obtain over \$2,000 for the copper should have been sufficient to rebut any impression he might have had that the scrap was of no value.

It is clearly established that theft from one's employer is a dismissable offense because it breaches the employee's basic obligation to act in the employer's interest and destroys the trust to which the employer is entitled to have in the employee. Claimant's conversion of large amounts of the copper on a number of occasions over an extended period of time simply underscores the seriousness of his violation and breach of the employment relationship. The nature of Claimant's offense properly led the Carrier to the conclusion that it was not obligated to attempt rehabilitation.

The Board considered Claimant's long service as a mitigating factor. We note that the offense of theft is usually not susceptible of mitigation, and we also note that Claimant's service was marred by a 1990 dismissal from service for failing a drug test. The Board declines to disturb the Carrier's assessment of the penalty of dismissal.

The Board reviewed the Organization's Submission and the record and is unable to find support for its assertion that Claimant was denied a fair and impartial Hearing.

AWARD

Claim denied.

Form 1
Page 4

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

National Railroad Adjustment Board
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.