

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SEABOARD AIR LINE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it dismissed Track Foreman J. L. Grimes without just and sufficient cause and on the basis of unproven charges.

(2) Track Foreman J. L. Grimes be reinstated with seniority, vacation and all other rights unimpaired and be reimbursed for all monetary loss suffered since he was removed from service.

OPINION OF BOARD: The issues before us concern the propriety of the dismissal on March 30, 1956, of the Claimant, a track foreman with a seniority date of September 19, 1929.

About ten weeks prior to his dismissal, Claimant received a letter dated January 25, 1956, from the Carrier's Division Engineer, which reads as follows:

"Mr. J. L. Grimes—

"This letter is being given you to advise you that you are being removed from service of the SAL R.R. Co. for the following reasons

1. Violation of Rule 'G' on Thanksgiving Day 1955
2. Rule 702
3. Rule 711
4. Rule 712
5. Rule 1124

"The above rules in book of operating rules effective Dec. 1, 1951.

"Violation of instructions in regard to groceries on camp cars contained in my letter of June 9th 1955 file 24.17.

"Violation of Rule No. 8 paragraph F of current M of W agreement effective July 1, 1941 in regard to making out reports.

"Also selling cross ties to Mr. W. R. Prince."

Upon receipt of that letter, Claimant duly requested a formal investigation pursuant to the provisions of Rule 6 (a) of the effective Agreement. The investigation was held on February 28, 1956, after a 22-day postponement, and by letter dated March 30, 1956, the Claimant was notified of the Carrier's decision. This letter reads as follows:

"Mr. James L. Grimes
1714 Grouson Street
Montgomery, Alabama

"This is to advise you that you are hereby dismissed from the service for violation of Rules G, 702, 703, 711, 712 and 1124 of the current Book of Operating Rules, and Rule 8, Paragraph (f) of the current agreement with Maintenance of Way Employees, as developed in investigation held at Americus, Ga., February 28, 1956.

/s/ S. E. Eslesck
Superintendent"

Petitioner does not contend that the investigation procedure was defective in any respect or that Claimant was prejudiced by the above-mentioned postponement. There appears to be no question but that Claimant was accorded a fair hearing and investigation and was afforded full opportunity to present his case.

Some of the charges directed against the Claimant are not supported by the record and do not therefore provide a proper basis for his dismissal. For example, there is not a scintilla of evidence in the record that Claimant, in violation of Rule 703, sent an insulting clipping regarding the definition of a "scab" to his superior, Roadmaster Crenshaw. Moreover, although there is testimony that on various occasions Claimant possessed intoxicants while on company property in violation of Operating Rule "G", there is no evidence that he did so on Thanksgiving Day 1955 which is the only Rule "G" violation charged by the Carrier. Nor are we satisfied that the record adequately supports the charges of absenteeism, falsification of payroll data, unreasonable use of groceries and failure to exercise the required degree of personal supervision.

On the other hand, it is apparent that ample competent evidence was adduced at the hearing and investigation to show that Claimant sold for his own profit old railroad cross-ties belonging to the Carrier to a Mr. W. R. Prince, loaned money to his subordinate employees at grossly usurious rates and had his private car serviced by a Carrier employe on company time and with company fuel. These acts do constitute sufficiently serious violations by a foreman to warrant disciplinary action and while Claimant has denied committing them, we are not inclined and it is not our function, as numerous Board Awards make clear, to weigh the evidence and to upset the Carrier's determination of the several conflicts in testimony. (E. G. see Awards 7020, 6866, 3827, 3149, 3036.

We do not agree that Claimant's usurious loans to subordinate employes were his own private affair; rather does it seem obvious that to permit such a course of action to continue unchecked might well cause the deterioration of employe relations and morale as well as respect for supervisory authority, matters that are certainly the legitimate concern of the Carrier.

Nor is it material that Roadmaster Crenshaw may have wished to cause Claimant's discharge and may have given Prince the money to purchase the cross-ties in order to entrap the Claimant. According to testimony of probative value that the Carrier chose to credit, Claimant affirmatively engaged in wrongful conduct; possible malice on the Roadmaster's part does not detract from that fact.

It is noted that the cross-tie incident is not specifically mentioned in the Carrier's above quoted letter of March 30, 1956, which notified Claimant of his dismissal. However, the reference to Rule 702 in that dismissal letter is sufficiently broad to embrace the improper sale of cross-ties, particularly when considered in connection with the Carrier's letter of January 19, 1956, also quoted above, which specifically notified Claimant, and thus put him on guard, that one of the charges against him was the sale of the cross-ties to Prince.

While this Referee is reluctant to sustain such extreme disciplinary action as dismissal in the case of an employe of long service, it can not be validly said that on the basis of this record the penalty exceeds the very considerable latitude the Carrier possesses in assessing punishment. We, accordingly, are not inclined to substitute our own judgment on the point for that of the Carrier. See Awards 891, 1310, 2621, 2632 and 8711.

In the light of all the circumstances mentioned above, we shall deny the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1959.