

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21955  
Docket Number MW-22009

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Louisville and Nashville Railroad Company  
(Monon Division)

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

(1) The dismissal of Machine Operator H. L. Newman was without just and sufficient cause and excessively disproportionate to the offense with which charged (System File D-106091 E-306-17).

(2) The Carrier shall restore the claimant to service with seniority and all other rights unimpaired and with pay for all time lost.

OPINION OF BOARD: The claimant was dismissed for having company property in his possession, to wit, a track jack. /  
The issue before this Board, specifically regards the appropriateness and severity of the discipline.

Careful examination of the record reveals that claimant had been disciplined for fifteen (15) days some eight years prior to the instant matter for misappropriation of company owned metals. His employment record thereafter was unblemished. Acting on an anonymous tip that claimant was selling company wire, Company police officials visited his home on May 31, 1975 and received permission to search his premises. The track jack was found in his garage. While there is no conflict respecting claimant's unreserved acquiescence to the search, there is a dispute regarding claimant's assertion that he apprised the officers that they would find a track jack in the garage. The investigators contend contrariwise. Nevertheless, the aforesaid property was found in full view in claimant's garage. 2

Subsequently thereafter he was charged with unauthorized possession of the track jack and freely admitted same during the investigation. However, he vigorously argued that he had just borrowed it. 3

Moreover, while cognizant that testimony was presented alleging claimant sold wire, the Board observes that it was inconclusive, unsubstantiated and not part of the charge. 4

5 We have searchingly reviewed all pertinent evidence and believe that claimant sincerely felt he had not committed a wrongful act. Had he anything to hide it is reasonable to conclude he would have denied permission for the search.

6 As the claimant later realized and admitted he did not have permission to the track jack. This Board hopes that after two and one half years out of Carrier's employ, claimant has come to the startling conclusion that possession of company property, stolen or otherwise without permission, is a serious offense. Although there is that reasonable quantum of evidence to sustain dismissal, we feel, considering all the facts and circumstances, the discipline claimant has already experienced served its punitive as well as rehabilitative purposes. We will reinstate claimant with all seniority rights restored, but without back pay for time lost.

7 Examination of First, Second and Third Division Awards reveal the remediative thrusts of disciplinary decisions. Claimant had been a satisfactory employe for the eight years prior to this incident. He was responsive to Carrier's deportment requirements. We certainly don't countenance or excuse irresponsible or reprehensible behavior. Claimant's actions were clearly unacceptable. We are compelled to counsel claimant that we consider this the final opportunity for him to learn the elementary distinctions between authorized and unauthorized possession of company property. Prompt and permanent dismissal would be appropriate if claimant in the future manifests recidivist behavior.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

The Agreement was violated to the extent expressed in the Opinion.

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Claim sustained to the extent expressed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.