

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22929  
Docket Number MW-22978

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Central Vermont Railway, Inc.

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

(1) The dismissal of Foreman R. L. Cavanna was without just or sufficient cause, on the basis of unproven charges and was extremely disproportionate to the charge of 'Unauthorized disposal of Company material on July 22, 1977' (Carrier's File SRB #6975).

(2) Foreman R. L. Cavanna be restored to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant had been in Carrier's service about six years and at the time of the occurrence giving rise to the dispute herein was employed as a production gang foreman.

On August 2, 1977, he was notified of his dismissal from service:

"Effective August 2, 1977 your services for the Central Vermont Railway are terminated for the following reasons.

1. On July 22, 1977 you disposed of Company Material which was not authorized.
2. On July 22, 1977 you falsified Production Gang Reports.
3. On July 22, 1977 between the hours of 1100 and 1530 you did not assign duties pertaining to the maintenance of track to the members of your gang under your direction.

"You may appear at the Investigation to be conducted at New London in the Enginehouse Offices on August 9th, 1977 at 0900."

The investigation was conducted as scheduled, following which claimant's dismissal was affirmed. A transcript of the investigation has been made a part of the record. From the evidence adduced at the investigation, it is quite clear that claimant gave away eight ties without authority. It is not clear from the record whether the ties were used or unused. However, the foreman had no authority to give them away, whether they were used or unused.

We do not find substantial evidence in the investigation to support the other charges in the letter of August 2, 1977.

The Board is of the opinion that claimant was subject to discipline for his actions in giving the ties away. However, we do not think that his actions justified the Carrier in depriving him of his means of livelihood, especially as the record shows no previous disciplinary action against him. Neither do we think that he should immediately be restored to service as a foreman.

It is our conclusion, and we so award, that claimant be restored to service with his former seniority as sectionman, without any compensation for time lost while out of service, and without prejudice to his later being considered for promotion to foreman if his services so warrant.

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 Employee involved in this dispute are respectively Carrier and Employee 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 discipline imposed was excessive.

Award Number 22929  
Docket Number MW-22978

Page 3

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Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.