

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24200
Docket Number MW-24162

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Consolidated Rail Corporation
(New York, New Haven and Hartford Railroad Company)

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

(1) The dismissal of Truck Driver G. H. Bruneau for 'alleged unauthorized sale of company property' was without just and sufficient cause and on the basis of unproven charges (System Docket No. NH-29).

(2) The claimant shall now be accorded the benefits prescribed in the fourth paragraph of Agreement Rule 14(D)."

OPINION OF BOARD: Claimant, a boom truck operator, was dismissed from service for allegedly engaging in the unauthorized sale of company property during six months in 1979.

At the investigation held on October 11, 1979, a Carrier Police Captain gave a comprehensive account of his investigation into the unauthorized sales of scrap track material. While pursuing a tip, the Police Captain examined weight receipts at Metal Recycling Company and he discovered that Claimant had delivered fourteen or fifteen loads of scrap metal to Metal Recycling Company during a period from April 27, 1979 to September 22, 1979. According to records provided by the manager of Metal Recycling Company, Claimant received about six thousand dollars in cash for delivering one hundred seventy eight thousand pounds of scrap metal. Though he admitted making the fifteen deliveries to the scrap dealer, Claimant testified that he tendered the proceeds from all the cash sales to the Assistant Track Supervisor (one of Claimant's superiors). Claimant also stated that the Assistant Track Supervisor instructed him to deliver the metal to a scrap dealer. Claimant's other supervisor stated that he never authorized the removal of scrap metal from the Carrier's possession. The Assistant Track Supervisor denied receiving any cash from Claimant except for a delivery Claimant made on September 21, 1979.

The Organization's primary argument is that Claimant cannot be blamed for any violation of the Carrier's rules because he was merely complying with orders issued by his immediate supervisor. The Carrier contends that Claimant has admitted that he sold Carrier property for cash and he knew or should have known that the sales were highly improper.

We have carefully reviewed all the evidence submitted at the investigation and we conclude the Carrier has met its burden of proof. The weight receipts and cash disbursement records of Metal Recycling Company show that Claimant received cash for delivering Carrier scrap metal to the dealer on numerous occasions. Claimant knew he was acting without proper authority.

While this Board recognizes Claimant's many years of fine service with the Carrier, Claimant committed an egregious violation not just once but fourteen or fifteen times. The Carrier trusts its employees to protect its property. Claimant flagrantly breached his obligations to the Carrier when he continuously sold the scrap metal without proper authority. Thus, we do not find any justification for reducing the assessed discipline.

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 Employees involved in this dispute are respectively Carrier and Employees 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 violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.

