

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24260
Docket Number MW-23952

Robert E. Peterson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Elgin, Joliet and Eastern Railway Company

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

(1) The dismissal of Track Foreman J. Pridmore and Trackman D. Villagran for alleged 'Unauthorized possession of a firearms' and alleged 'Unauthorized possession and removal of scrap armatures' on April 22, 1979 was improper, without just and sufficient cause and on the basis of unproven charges (System File SAC 29-79/VM-21-79).

(2) The claimants shall be reinstated with seniority and all other rights unimpaired, their records cleared and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: There is no doubt from a careful, objective and studied review of the voluminous record in this dispute that substantial credible evidence reveals Claimants to have been in the unauthorized possession of over 300 pounds of scrap armatures (pure copper) which they had personally loaded into a company van while otherwise assigned by Carrier to work with a track maintenance gang within the confines of a U. S. Steel Corporation plant. They were in fact apprehended with the material by a plant security officer while attempting to leave the plant; the security officer having been alerted by other plant personnel to stop the van. The record also shows that a search of the van Claimants were using revealed they were in possession of a firearm, if not directly, then indirectly; a lieutenant of the plant security stating he found a .22 caliber, two-inch barrel, pistol (loaded, with five rounds) in the sleeve of a jacket in the back of the van.

The fact Claimants would deny ownership of both the firearm and the jacket, or that Carrier was not able to prove ownership, or that when the lieutenant of the plant security found the weapon there were no other witnesses then present, are of no real consequence since Claimants were the only two persons who had then been using the van. Further, even absent the firearm's charge, there is substantial other evidence to support the conclusion Claimants were guilty of the unauthorized possession of the scrap material, a major offense in and of itself. In this latter regard, we are not convinced, as Claimants and the Organization assert, their possession of the material was in compliance with Carrier's standing instructions which require employees to pick up all scrap, etc., from the right-of-way. We also fail to find that Claimants, as the Organization contends, were disciplined on the basis of hearsay evidence. Under the circumstances of record, it was not necessary that Carrier have the benefit of testimony from the plant employee who had reportedly first observed and alerted other plant personnel to the fact Claimants were loading copper into their van from a plant storage area. There was sufficient and substantial testimony from other witnesses to corroborate the fact Claimants were in the unauthorized possession of plant copper when they were stopped at the plant gate. Thus, Carrier did not have to bring forth the plant employee, nor was it necessary they not honor the employee's purported request not to even reveal his name at the formal hearing.

There being no showing that Claimants had been denied due process or had been treated in an arbitrary or capricious manner, this Board is compelled to support Carrier's imposition of the dismissal penalty. The fact Claimants had 20 and 27 years, respectively, of unblemished service prior to their dismissal does not serve to mitigate the severity of the discipline to be imposed. While it is unfortunate that after so many years of service they would place their jobs on the line by attempting to convert material not belonging to them for their own personal gain, the Carrier has no obligation to retain in its employ those employees who prove themselves to be untrustworthy and dishonest, regardless of years of service. The Carrier has a need and a right to rely upon the integrity of employees to refrain from acts of dishonesty when it dispatches them to work along its right-of-way and within the confines of industries which it services. Thus, when it is determined employees would breach that trust, such as in the instant case, to permit such employees to remain in service would seriously jeopardize the reputation and character of the overwhelming majority of employees who constantly and continuously throughout their careers respect and honor that trust which is placed in them to not become involved in surreptitious and unlawful activities.

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

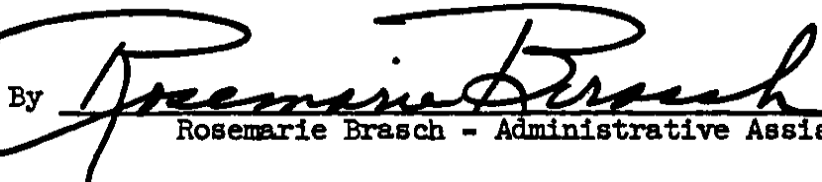
That the Agreement was not violated.

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 - Administrative Assistant



Dated at Chicago, Illinois, this 23rd day of March 1983.