

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24314
Docket Number MW-23930

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Seaboard Coast Line Railroad Company

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

(1) The dismissal of Crankhand M. L. Weaver was arbitrary, capricious and on the basis of unproven and disproven charges (System File C-4(13)MLW/12-39 (79-36) J1).

(2) Crankhand M. L. Weaver shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On February 26, 1979, the Carrier directed a notice of investigation to the Claimant requesting him to attend an investigation. The letter read in pertinent part:

"You are charged with violation of Safety Rules for Engineering and Maintenance of Way Employees effective September 1, 1967, as follows:

Rule 3 - 'To enter or remain in the service is an assurance of willingness to obey the rules.'

Rule 26- That portion of Rule 26 which reads: 'Unauthorized employees and others not having legitimate Company business to transact are prohibited from entering or loitering about railroad offices...yards...and other properties.' And,

Operating Rule Book of Seaboard Coast Line Railroad Company effective December 4, 1978, as follows:

That portion of Rule G-1 which reads: 'Disloyalty, dishonesty ... insubordination...or concealing facts concerning matters under investigation will subject the offender to dismissal.'"

The investigation was held on March 1, 1979, and subsequent thereto the Claimant was dismissed.

The charges were preferred in connection with the Claimant's delivery of scrap ties to the George Hunt Top Soil Company. There is no dispute that the ties were removed from the Carrier's property by the Claimant and delivered to the aforementioned party.

It is the conclusion of the Board that while the evidence conflicts, and there is a substantial basis to support the Carrier's finding and furthermore, the defense put forth by the Organization fails to overcome the prima facie nature of the Carrier's case.

The Organization contends that the Carrier had a practice of allowing employees to remove old crossties unfit for the Carrier's use, provided such crossties were not sold to a third party. They contend that there is no evidence that the Claimant sold the ties, but received monies only for the labor and use of his truck involved in picking up and delivering the ties to Mr. Hunt. They assert no value was placed on the crossties delivered and that the Claimant received no money for the ties themselves. The Organization directs attention in this respect to the Claimant's testimony. The Organization also asserts that there was a practice, condoned by the Company, of employees accepting money for the labor involved in delivering old ties to non-employees.

While the Organization's case is ably argued, it fails to overcome the prima facie nature of the Carrier's proof. Even assuming that the Claimant received money for only labor, there is convincing evidence in the record that the Claimant had been specifically and previously warned not to accept any money in connection with the ties including the delivery of ties. Thus, the Claimant's conduct was clearly contrary to Company policies and clear instructions given to the Claimant. It is clear that the policy of giving old ties to employees was to allow them to utilize them for personal use primarily and was specifically designed to prevent them from taking advantage of the benefit for personal financial gain. This includes gain for so called "delivery". The testimony of D. S. Blair indicated that in December, 1977, it had come to his attention that Mr. Weaver was selling ties to Mr. Hunt. Mr. Blair further testified that after he became aware of this, he "... specifically spoke with him (Weaver) and told him of Mr. Herndon's feelings that we could not, would not, let anyone receive any kind of money for transporting, selling, taking tips, or anything, no matter what you call it, we would not tolerate." In the same vein, Division Engineer Herndon testified as follows:

"... and because of several instances which came up in year 1977, one of which involved Mr. Weaver, I set down the policy with all of the Roadmasters and had them advise all of their forces that under no circumstances would any ties be given to anybody for resale or trade or any kind of compensation in any way, and I told them to make that plain to all of the foremen, if they wanted to give a tie to a neighbor or somebody, they could do it but they could not accept any money for it, nor any compensation. A case came up in 1977, involving Mr. Weaver and I personally asked Mr. Blair if he had told all of his firemen and all of his men and then I asked him I says, have you advised Mr. Weaver that he cannot use a cross tie or get a cross tie and give it to anyone else for any kind of compensation and Mr. Blair informed me he had."

The evidence reviewed above establishes that there was substantial evidence to support the portion of the charge relating to dishonesty. The seriousness of this charge is sufficient enough to uphold the discharge. The Board also notes that there is evidence supporting other portions of the charge.

In summary, it is the conclusion of the Board that the discharge is proper in light of the fact that the Claimant had been specifically warned not to engage in the distribution of old ties to non-employees for profit in any form. His conduct, contrary to these clear instructions, was both dishonest and insubordinate.

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 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 14th day of April 1983.