

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24736  
Docket Number CL-24563

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9619)  
that:

(1) Carrier's action in the dismissal from service of Mr. Steven A. Hoyt, Trucker-Janitor, Shoreham, Minnesota, effective April 2, 1981, was arbitrary, capricious and unreasonable.

(2) Mr. Steven A. Hoyt shall have his record cleared of all charges placed against him as a result of this dispute.

(3) Mr. Steven A. Hoyt shall be reinstated to the service of the Carrier with seniority and other rights unimpaired.

(4) Mr. Steven A. Hoyt shall now be compensated for all wages and other losses sustained account of this arbitrary dismissal.

OPINION OF BOARD: The Claimant, Steven A. Hoyt, a trucker-janitor, has a seniority date of May 17, 1978. On March 18, 1981, he was issued a notice to appear at a formal investigation concerning five absences and the removal of Carrier property. As a result of the investigation, Claimant was dismissed from the service.

The facts in the case are not in dispute. The Claimant took two scrap crossbuck railroad crossing signs and placed them next to the acetylene shed on Friday, March 13, 1981. The Claimant admits removing them from Carrier property on the following Monday, March 16, without permission. In his defense, Claimant pointed out that, his short tenure in his position of trucker-janitor (less than two months) he was not made aware he had to have permission and/or arrange payment for the removal of any scrapped (junked) material. The Carrier's position is that, by his own admission, Claimant committed a dismissable offense, the seriousness of which cannot be minimized. The Carrier asserts no mitigating circumstances exist.

The Board's review of the record indicates that Carrier coupled the removal of the property with what it characterized as a well known policy. The Carrier states the policy is that employees who desire a particular item may be issued a permit to purchase and/or remove scrap items. The Carrier argues the Claimant was not a new employee and is expected to know the rule. The record contains no evidence to support Claimant had actual knowledge or knowledge by inference of this rule. This Board, by long precedent, has indicated it chooses not to substitute its judgment for that of the Carrier. However, when the weight of all submissions shows that, in assessing the appropriate penalty, material factors, including the totality of Claimant's actions, were, if not ignored,

overlooked, this Board will not hesitate to pronounce another long established precedent, which is that the severity of punishment must be reasonably related to the gravity of the offense. Here, Claimant did remove two scrap crossbuck crossing signs, but when his overt methods of removal are examined, they are consistent with his defense of ignorance of the general rule cited by Carrier. In summation, Claimant's dismissal is reduced to a disciplinary layoff, and he is to be restored to duty without loss of seniority, but with no back pay.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.

