NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24737
THIRD DIVISION Docket Number MW-24637

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company (former St. Louis-
(San Francisco Railway Company)

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

(1) The dismissal of Foreman G. Roberson and Trackman J. N. Taylor for alleged violation of Rules '176', '180' and '181' was without just and sufficient cause and on the basis of unproven charges (System Files B-1055/MWC 81-6-4B and B-1239/MWC 81-6-4A).

(2) Foreman G. Roberson and Trackman J. N. Taylor 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: This case involves the dismissal of Foreman G. Roberson and Trackman J. N. Taylor, the Claimants, for violation of Rules 176, 180 and 181. On January 24, 1981, working on track gang #221 in Birmingham, Alabama, they discovered six television sets and one stereo lying between the Carrier's tracks and those of the Southern Railroad. These sets had been thrown out of a trailer on a flat car by thieves who had broken into the trailer. The televisions and stereo were loaded onto the section truck assigned to gang #221 and taken back to the Tool House. Each Claimant placed a television set in his personal automobile. Three television sets remained in the section truck. One television set and the stereo were in the Tool House. At this point, Special Agents investigating the break in of the trailer arrived at the Tool House. As a result of this incident, the dismissals were imposed.

The Organization contends the transcript establishes the Claimants had no intention of being dishonest. Claimant Roberson planned to report finding the pilfered merchandise, but was unable to execute this plan when his telephone conversation with the Roadmaster was abruptly ended. It is claimed by the Organization that both Claimants planned to take the two television sets to the "East Thomas Yard" as evidence of their find. The Organization asserts the Carrier failed to present any probative evidence the Claimants intended to do anything other than take the two televisions to the "East Thomas Yard" and turn them into the Roadmaster.

Our review of the record indicates otherwise. The defense that the Claimants intended to bring the television sets to the Roadmaster is questionable. First, neither Claimant attempted to use the service truck's two-way radio and report the finding of the television sets and stereo. Testimony establishes the two-way radio was in good working order. The Tool House has a fence around it and can be locked. Claimant Roberson admitted he considered the Tool House to be a safe place. Notwithstanding, the Claimants contend they each placed a television set in their respective, personal automobiles in order to bring it to the Roadmaster. This is an improbable explanation of their conduct. If Claimant Roberson,

as gang foreman, believed it essential to transport the television sets and stereo to the Roadmaster, he would have made proper arrangements to do so, but not by the means involved herein. The record also shows another employe's car had its trunk open when the Special Agents arrived. Supporting testimony by Witnesses Hurbert and Bosworth was contradictory and cannot be given weight.

This Board is cognizant of both Claimants', heretofore, good record. Nevertheless, our examination of the record provides no basis to question the Carrier's conclusion the Claimants' explanation of the circumstances were unbelievable. We find no persuasive evidence or explanation was presented by the Claimants to dispute the implication of their conduct. The Carrier had sufficient basis to conclude the Claimants, by their actions, intended to and were in the process of converting the television sets to their personal control and possession.

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 Employes involved in this dispute are respectively Carrier and Employes 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: Nancy J. Dever - Executive Secretary

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