

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24821
Docket Number MW-24431

Edward M. Hogan, 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 Section Foreman J. C. Curvin for alleged violation of 'Rule G-1' was arbitrary, capricious, without just and sufficient cause and a gross abuse of justice and discretion by the Carrier (System File C-4(13)-JCC/12-39(80-45) G).

(2) Section Foreman J. C. Curvin shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered."

OIPINION OF BOARD: Claimant was withheld from service of the Carrier, effective April 10, 1980. A formal investigation was held on April 21, 1980, at which Claimant faced charges of violation of Rule G-1 of the controlling Agreement for selling crossties for personal gain and utilizing Carrier forces and equipment for loading and unloading of the crossties. By letter of April 30, 1980, Claimant was advised that his service to the Carrier had been terminated effective April 10, 1980, as the charges against him had been substantiated at the formal investigation.

The Organization argues that the Carrier has acted in an arbitrary and capricious fashion in that the Claimant's use of the Carrier equipment in removing the crossties actually benefited the Carrier, and that there was no value in the scrap crossties that the Claimant admittedly removed from the Carrier's property. The Organization further contends that the evidence as presented by the Carrier at the formal investigation did not support the charges as levied, and that regardless, the discipline as assessed against the Claimant was excessive. The Claimant had 16 years of service with the Carrier.

The Carrier argues that there was no question that the Claimant was guilty of selling old crossties for personal gain and utilizing Carrier forces and equipment for transporting these crossties, as the Claimant fully admitted this at the formal investigation. The Carrier further argues that the discipline assessed was for just and sufficient cause, and that there was no abuse of discretion on the part of the hearing officer, nor is there any evidence on the record of arbitrary, capricious or discriminatory behavior. The Carrier further argues that this Board should not substitute its judgment for that of the hearing officer with respect to the findings, the intent of the Claimant or the discipline assessed.

There is no question that the Claimant admitted at the formal investigation that he sold crossties for personal gain. He further admitted that he utilized Carrier equipment in the removal and delivery of the crossties

to his sales location. Importantly, the Claimant, on page 9 of the transcript, admitted that he was fully aware that it was against company policies for employees to sell company material. In short, there was very little evidence in factual dispute before the hearing officer at the formal investigation as the Claimant admitted virtually every element of the charges.

This Board will not substitute its judgment for that of the hearing officer, absent evidence of arbitrary, capricious or discriminatory behavior on the part of the hearing officer or an abuse of managerial discretion. Here, we find none. We cannot condone theft or dishonesty in any fashion. Referee Lieberman, in Third Division Award 19929, states:

"The discipline imposed was neither arbitrary nor capricious, in spite of the small dollar value of the gasoline involved ... dishonesty must be considered a serious offense."

In Third Division Award 20003, Referee Blackwell states:

"... dishonesty, and competence, and making false reports and statements may result in immediate dismissal irrespective of the number of demerits."

Lastly, in Award 20292 of the Third Division of this Board, it was stated:

"We are not mindful of the small dollar value involved. However, dishonesty must be considered a serious offense and this Board has refused to reinstate employees who have misappropriated items of small value."

Secondly, with respect to whether or not the hearing was fair and impartial and whether the discipline was arbitrary, capricious or unwarranted, we find it useful to review Referee Rohman's Award 14700 of the Third Division of this Board:

"In view of the Claimant's own admission at the investigation, this Board would be usurping its powers where to substitute its judgment for that of the Carrier."

Therefore, this Board finds and holds that the Claimant sold Carrier property for personal gain; that he was aware that it was against Carrier policy; that the Claimant received a fair and impartial investigation; that the determination that the selling of Carrier property was a serious offense was warranted; that this Board will not substitute its judgment for that of the Carrier; and that the discipline assessed was not an abuse of Carrier's discretion.

This Board is not unmindful of the 16 years of service by the Claimant to the Carrier. In fact, these many years of service have made this decision difficult for this Board. However, because of the Claimant's own admissions at the formal investigation and because of the seriousness of the

offense of theft of company Carrier property, we find ourselves no other alternative than to ratify the findings of the hearing officer. Although it is longstanding precedence of this Board that dishonesty in any form cannot be tolerated, we find it useful to reaffirm and reiterate that theft of Carrier property cannot be condoned in any fashion, and that dismissal is an appropriate response in cases where such charges are proven. (See also Second Division Awards 7103, 6525, 6368, 6214 and 4744; also, Third Division Awards 20744 and 20292.)

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. Leavelle - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984