

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26116
Docket Number MW-26147

Philip Harris, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company (Southern Region)

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

1. The dismissal of Equipment Operator J. P. Eddy, Jr., for alleged 'unauthorized removal and sale of sixty (60) used track ties on May 21, 1983, at Mile Post 10, Newport News Yard, in Newport News, Virginia' was arbitrary, capricious, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File MG-4297/C-D-2084).

2. The claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On May 20, 1983, the Claimant asked an Assistant Track Supervisor for permission to take for his own use forty used cross ties. The request was approved, a permit was issued to remove the ties from the property, and Claimant paid \$83.20 to the Carrier for them. The next day it was discovered that one hundred ties were removed and sold to a garden supply store. An Investigation was conducted and it came to light that Claimant received \$500.00 for the ties. Hearings were set, postponed and held, eventually ending with separation from service for dishonesty.

The Organization states that there were inaccuracies in the Transcript and improprieties in conducting the Hearings. Also, ties are given free to other employees and civic associations, and the ones taken were in poor condition and would cost the Carrier to have them hauled away.

The Board relies, for certain determinations, on the Carrier as the trier of the case. In the Hearings on the property the Carrier rejected the contentions of the Organization. What is not in dispute between the Parties is that the Claimant knew he required permission to remove the ties, and then obtained written authorization to proceed, paying the necessary sum for the transaction. He then took possession of sixty more ties than he was allowed, and sold them all for \$5.00 each. This is an act of dishonesty for which the Carrier may properly dismiss him without being subject to the charge of arbitrariness or injustice.

Concerning the Claim that the Carrier had given ties to others without charging for them, even if this were true, it is the right of an owner to dispose of its property as it sees fit. Making a gift of ties does not thereafter permit employees to help themselves to the ties whenever they wish. The Claimant recognized the need to get clearance for the first forty ties and pay for them - - he could not be unaware that the same requirement held for the next sixty he took possession of.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1986.

