

The Third Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Baltimore and Ohio Chicago Terminal Railroad Company
(B&OCT)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT):

On behalf of K. Budnick for all time lost account of being suspended for 30 days for alleged unauthorized removal of 20' x 4" PCV pipe from Carrier property and 'Bycome' worksites. Carrier file: 3-SG-780."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In reaching a decision in this matter, the written statements by Mr. Joseph H. Hubbard of Bycome are given no weight.

A key point is not in dispute in this case. The Claimant testified that in early January 1985, he removed PCV plastic pipes from the Carrier's property, specifically, the basement of Argo Interlocking Tower. The Claimant contends that he was given permission by Mr. Hubbard to remove "some" PCV pipe; two witnesses for the Claimant corroborate the approval. This approval was given, according to one of the witnesses, in October 1984.

Although at Q/A 194, the Claimant testified that he did not know who put the pipe in the basement of Argo Tower, the Claimant nevertheless removed the pipe. If the Claimant did not place the pipe in the basement, then he had no way of knowing to whom the pipe belonged. The pipe was not marked as to its owner, and Bycome did not store its pipe in the Tower's basement. The credibility of Claimant's account is further weakened by the long time span between the alleged permission in October 1984, and the removal from the Argo Tower in January 1985.

A decision in this matter does not turn on the use of hearsay evidence, rather on the credibility of Claimant's testimony. It is well established that an evaluation of credibility is the right and function of the Hearing Officer, and not this Board in its appellate function. There is substantial evidence against the credibility of Claimant and in support of the conclusion of guilt as charged.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.