

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Roadway Machine Mechanic R. W. McKaughn for alleged violation of Rule 607 was unjust, arbitrary and on the basis of unproven charges (System File MW-86-10-CB/53-890).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered commencing December 20, 1985."

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 employes 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.

On December 20, 1985, Claimant was ordered to appear at a formal investigation:

"...to develop facts and place responsibility, if any, in connection with your alleged theft of a 4-channel Motorola handset radio from the St. Louis Southwestern Railway Company."

The testimony taken at the investigation indicates that sometime during 1983 Roadmaster R. P. Crabtree reported that a four channel Motorola handset radio issued to him was missing or stolen. In December 1985, Assistant Track Inspector M. D. Crabtree had occasion to enter Claimant's Company

truck to recover a pair of binoculars that he had loaned him. While removing the binoculars he noticed a radio sticking out from under the front seat. He picked it up and while it did not have any Carrier identification on the unit, and the serial numbers had been removed, it appeared from the condition of the case that it was the radio that Roadmaster Crabtree was missing.

When the unit removed from the truck was returned to Roadmaster Crabtree he contacted Claimant to determine how it came into his possession. Claimant indicated that he had found the unit about a year earlier near the northeast corner of the railroad depot. At the time it was not working and had a broken antenna. Claimant placed the radio in his truck where it remained for some time. Later, Claimant, who at the time was also a deputy sheriff, took the radio to a friend and had it repaired and replaced its crystals with police frequency crystals so that he could monitor Sheriff's Office radio transmissions.

Roadmaster Crabtree instructed Claimant to take the radio back to the technician that made the repairs and have the original crystals reinstalled. The reinstalled crystals were railroad frequencies.

Following the investigation Claimant was dismissed from service. The Organization seeks to have this discipline set aside on a number of grounds. It contends that the Carrier never established that Claimant actually was responsible for the theft of the radio. In fact it challenges whether or not the radio removed from his truck was the same unit that Roadmaster Crabtree had reported as missing.

From our study of this record we are satisfied that Claimant had in his possession in December 1985, a radio that had been assigned to Roadmaster Crabtree and turned up missing two years earlier. The record, though, does not establish conclusively that Claimant was responsible for the theft of the unit. In fact when Roadmaster Crabtree was asked if he thought that Claimant had stolen the radio he answered "no" and when asked if he believed Claimant when he told him that he had found the radio his answer was "yes."

Claimant, though, if all aspects of his story are believed and he was not involved in stealing the unit, exercised extremely poor judgment in keeping the radio and converting it to frequencies that he could use while working as a deputy sheriff. As a long service employee of the Carrier, and one also working part time in law enforcement, he should have assumed that any unattended radio he came upon under mysterious circumstances on Carrier property probably belonged to the Carrier and had been lost or stolen. He surely should have known from his police experience that it was not his to keep.

Under the circumstances Carrier is justified in administering discipline, even harsh discipline, because it need not tolerate situations whereby employees convert Carrier equipment they happen upon to their own

personal use. However, in this case we question whether discipline of dismissal is appropriate. The record indicates that Claimant worked for the Carrier for twenty and one-half years prior to this incident. In that period the Carrier has not had cause to administer prior discipline. By any measure Claimant, prior to this incident, had been an excellent hard working employee. Roadmaster Crabtree praised his work as:

"Ronnie McKaughn is one of the finest mechanics the Cotton Belt has got."

Assistant Track Inspector Crabtree, when asked his opinion of Claimant stated:

"I think he's a pretty good old boy."

When urged to rate him on a scale of one to ten, he replied:

"As a mechanic, I don't think you can beat him. He knows what he's doing as a mechanic."

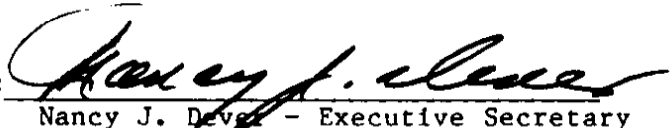
Accordingly, we feel that the discipline of dismissal in this matter is excessive and it should be converted to a disciplinary suspension equivalent to the time already out of service. Claimant shall be promptly returned to service, with full seniority and future fringe benefits but without compensation or fringe benefits for the time out of service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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