

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10114) that:

(a) Carrier violated the Clerks' Agreement at Vaughn, New Mexico, when on April 22, 1985, it dismissed J. M. Trujillo from service, and

(b) Facts developed at the formal investigation held on April 22, 1985, failed to sustain Carrier's alleged charges and did not justify or warrant the harsh penalty imposed, and

(c) J. M. Trujillo shall now be reinstated to service of the Carrier with all rights unimpaired and paid for all monetary loss sustained as a result of being discharged on April 22, 1985, and

(d) J. M. Trujillo shall be paid an additional twelve per cent (12%) per annum until claim is paid."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

At the threshold Carrier maintains that this claim is time-barred due to delayed appeal from initial denial. The Organization contends that Carrier officials granted oral waivers of the time limits and urge also that the hearing and investigation was defective due to role-mixing of the hearing and appellate officers. The Board has reviewed these contentions and finds it appropriate to determine the case on its merits without necessarily resolving the countervailing procedural/jurisdictional arguments of the Parties. Claimant was terminated following hearing and investigation upon which Carrier found him guilty as charged for misappropriating and converting to his own use some 62 listed items of Carrier property, to wit:

1.	1	8-lb. sledge hammer
2.	1	12-lb. sledge hammer
3.	375	8 1/2" x 11" envelopes
4.	169	10 1/2" x 14" envelopes
5.	399	7" x 10" envelopes
6.	55	3 5/8" x 6 1/2" envelopes
7.	62	9" x 12" envelopes
8.	1	box "Bostitch" staples
9.	1	"Conger" switch lantern
10.	1	"Timesaver" 18-in. horsehair broom brush
11.	7	"Lakeside" yellow 10-minute fusees
12.	4	"Lakeside" red 10-minute fusees
13.	2	"Standard Rwy" torpedos
14.	2	90-lb. guard rail C-clamps
15.	1	90-lb. switch connection rod & connector
16.	5	90-lb. heel blocks for switch points
17.	2	90-lb. frog heel blocks
18.	1	90-lb. guard rail spacer block
19.	9	pieces of scrap rail and one scrap switch rod
20.	3	scrap water buckets, marked "ATSF"
21.	2	66" x 1 1/2" lining bars
22.	3	tubes 3-oz. "Dixie" drinking cups
23.	1	roll of tissue paper
24.	1	24-in. pipewrench, Ridge Brand, marked "ATSF"
25.	1	new insulated end post, 136-lb. rail "SF CO"

26.	1	"Slaymaker" S-1 padlock, ATSF, keys
27.	4	ballast forks - 1 new and 3 used
28.	3	square shovels
29.	1	"Lenox" hacksaw and blade
30.	1	Carman's oiler, 2-gallon
31.	1	Carman's oiler, 1-gallon
32.	1	18-in. chisel bar, marked "ATSF"
33.	2	pr. welding gloves, green
34.	1	yellow ATSF hardhat
35.	1	blue flag
36.	1	yellow flag
37.	1	red flag
38.	1	journal brass packing hook
39.	1	hardhat winter cap liner
40.	1	mop wringer
41.	1	mop bucket on wheels
42.	2	Santa Fe 1927 Std. books
43.	4	Santa Fe 1014 Std. books
44.	2	Santa Fe duplicate message books
45.	1	cordless jack circuit box
46.	1	Dispatcher phone
47.	1	alloy chain, 8-ft. x 5/8-in., heavy duty
48.	2	heavy-duty chain hooks
49.	1	6-pack drinking water, "Adams Ale"
50.	1	18-in. horsehair brush broom head

51.	2	11-ft. switch ties
52.	1	8-ft. cross tie
53.	3 1/2	bridge timbers
54.	1	white Company hardhat, used
55.	1	Company first aid box, 8" x 5 1/2" x 6"
56.	1	gallon oil can, used, marked "ATSF"
57.	1	coal hod bucket, used
58.	1	square shovel, used, marked "ATSF"
59.	1	spike pulling bar
60.	1	tie thong, "Hubbard" brand
61.	1	pick and handle, marked "ATSF"
62.	1	"Slaymaker" brand S-1 padlock, new

Even allowing that some of those items might have been property in Claimant's possession for use at work, by his own admission the majority of the items were "stolen" by him from Carrier. There can be no doubt on this record concerning his culpability for serious misconduct which traditionally has warranted the discharge penalty. Even if, arguendo, Claimant's proven guilt did not warrant the extreme penalty for an employe with such long service, a review of his prior record shows a suspension and four previous dismissals with leniency reinstatments, one for stealing Carrier property. Given the plainly proven facts of record, this claim must be denied.

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 August 1988.