

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Railroad Company

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

(1) The dismissal of Sectionman C. A. Gonzales for alleged violation of Rule 575 on or about March 6, 1987 was arbitrary, capricious, unjust and in violation of the Agreement (System File BN-87-15/DMWD 870717).

(2) The Claimant shall be reinstated to service with all seniority and other rights unimpaired, he shall have his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered, all in accordance with Rule 40 of the Agreement."

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.

Claimant was employed as a sectionman by the Carrier. On April 13, 1987, Claimant was directed to attend a formal investigation in connection with the charge:

"for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged unauthorized removal of Burlington Northern Railroad ties from Wheatland Depot, Wheatland, Wyoming on or about March 6, 1987, which was first made known to Superintendent's Office at 1:00 P.M., April 13, 1987, Denver, Colorado."

The hearing took place on April 21, 1987, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of theft for removing ties from the Carrier's property and trading them to another individual in exchange for a hog. Said action can clearly be considered theft, and Claimant's explanation that he was intoxicated at the time does not constitute a valid excuse.

Once this Board has determined that there was sufficient evidence in the record to support the guilty finding, we next must turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find the action to have been unreasonable, arbitrary, or capricious.

Theft of Carrier's property has been found to be a dismissible offense on numerous occasions in the past by both this and other Boards. Given the nature of the wrongdoing, we cannot find that the action taken by the Carrier was unreasonable.

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 4th day of May 1989.