

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.
(Chesapeake & Ohio Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (C&O):

On behalf of Signalman D. E. Wotchko, headquartered at Saginaw, Michigan, regular assigned hours 7:00 a.m. to 6:00 p.m. assigned noon meal period 12:00 noon to 1:00 p.m. regular assigned work days Monday through Thursday:

(a) Carrier violated the parties' Schedule Signal Agreement, particularly Discipline Rule 701 when it failed to meet the required burden of proof following Carrier charging Claimant Dennis E. Wotchko '. . . For unauthorized possession company material and equipment near your headquarters at Saginaw, Michigan, at approximately 12:45 p.m., on Thursday, April 17, 1986.' Without prejudice to the above position, discipline rendered was excessive in light of the charge, evidence presented and circumstances involved.

(b) As a consequence of such action, Carrier be ordered to make Claimant Dennis E. Wotchko whole for all wages and benefits lost, including all seniority rights unimpaired. Furthermore, Claimant Wotchko's personal record be cleared of all reference to the matter involved herein. General Chairman File SG-828-I Carrier File 86-22-PM"

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 were given due notice of hearing thereon.

On April 17, 1986, two Company Officers sighted Claimant, a Signaller, in the Carrier parking lot about to leave the premises. They approached him and questioned him about leaving work early. While talking to Claimant the Officers noticed a crossbuck sign and tree trimmers in the back of Claimant's truck which they believed to be Carrier property. When questioned about these items, Claimant offered to return them to where he had gotten them and did before leaving Company property.

The Carrier subsequently charged Claimant "with responsibility for unauthorized possession of company material and equipment." On May 19, 1986, Claimant was advised by letter that as a result of the formal investigation he had been found in violation of the charge. Based on this finding and in consideration of his prior record Claimant was given a disciplinary suspension of ten working days.

The Organization contends first that Claimant was denied his due process right to a fair hearing because the charge was vague and the Carrier had failed to cite a Rule or written bulletin prohibiting the borrowing of Company tools or the removal of scrap material from the property. As this Board stated in Third Division Award 21395, "The purpose of such notice is to alert the employee to the charges he must face and provide sufficient specificity to enable him to prepare his defense."

It is amply clear that Claimant herein arrived at the investigation fully prepared to defend himself against the Carrier's allegations and, accordingly, was not deprived of his right to a fair hearing.

On behalf of Claimant the Organization proffers several arguments concerning what it believes to be the Carrier's failure to meet the requisite burden of proof. It contends that the sign which Claimant took from a scrap heap had been placed there by another employee who had previously been given the sign by his Foreman and that, therefore, when Claimant removed the sign he was not only taking material that had no functional use to the Carrier, he was taking material that belonged to a fellow employee and not the Carrier.

The Organization further asserts that the Carrier over the years had allowed employees to borrow its tools for personal use and furthermore that Claimant had received permission to use the tree trimmer from the employee charged with the responsibility for maintaining and distributing that tool. Finally, the Organization maintains that what was really at issue when this incident occurred was an attempt by certain Carrier Officers to set up Claimant in retaliation for complaints he had made against them in his capacity as a Union representative.

The Board has consistently held that a Carrier's findings in discipline cases will not be overturned if supported by substantial and credible, though controverted evidence. In the instant case, although the evidence is mixed it does, in the Board's view, sufficiently demonstrate that Claimant committed the offenses as charged.

The final issue for our consideration involves whether there exists a basis for modifying the ten day suspension the Carrier assessed Claimant. Claimant was found guilty of unauthorized possession of Company material and equipment. This is recognized as a serious offense throughout the industry. Second Division Award 10336.

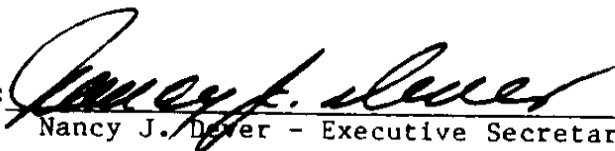
Once this offense has been established, it has not been unusual for the Board to uphold a long-term suspension or even a discharge. Had the Carrier herein assessed such a penalty the Board would have afforded greater weight to the mitigating circumstances present in the record. However, the disciplinary action assessed Claimant was a relatively short suspension given the seriousness of the offense. Therefore, in light of all the circumstances, the Board concludes that the ten day suspension was reasonable.

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 27th day of April 1990.