

The Third Division consisted of the regular members and in addition Referee Thomas J. DiLauro when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10600) that:

1. Carrier violated the effective Telegraphers' Agreement when, following an investigation on July 26, 1990, it suspended Operator Clyde M. Yahnke from service for a period of forty-five (45) days commencing July 23, 1990;

2. Carrier shall now compensate Mr. Yahnke for all time lost as a result of this suspension from service and shall clear his record of the charge placed against him."

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 July 21, 1990, at approximately 2:30 P.M., the Assistant Trainmaster observed three men loading lumber on top of a white station wagon parked by the Steel Car Shop in Joliet. The Acting Chief informed the Assistant Trainmaster the men lacked authority to be on property. As the white station wagon proceeded to Gate 5, the Assistant Trainmaster pulled up beside it. The Claimant was driving the white station wagon. The Assistant Trainmaster asked the Claimant whether he had permission to be on the premises, and the Claimant said he would get permission from the Car Department that evening.

On July 23, 1990, the Claimant was removed from service. By letter dated July 23, 1990, the Claimant was directed to report for an Investigation:

"This investigation is being convened to develop all facts and to determine your responsibility, if any, relative to the charge that you were dishonest when you allegedly removed wood belonging to EJ&E Railway Company from the Steel Car Shop at Joliet, without authorization from the proper officer, at approximately 2:30 p.m., July 21, 1990."

As a result of the Investigation, the Carrier suspended Claimant from the service of the Carrier for a period of forty-five (45) days commencing July 23, 1990.

The Organization maintains the Carrier's action was arbitrary and capricious in that it singled out the Claimant for punishment unlike any other punishment issued during the last ten years, and the action was contrary to its own policy regarding discipline. The Organization notes the Carrier implemented a policy of instructive discipline in the form of demerits rather than suspensions in 1981, and no other employee has been subject to suspensions since the implementation of this policy.

In response to the Organization's argument that it acted arbitrarily and capriciously in disciplining the Claimant, the Carrier argues it acted within its disciplinary policy. The Carrier cites the January 1, 1981 disciplinary policy which provides:

"The Carrier may, however, issue suspensions with loss of pay when warranted. Major offenses such as ...dishonesty...may subject the offender to dismissal, regardless of demerits."

The Carrier maintains dishonesty is a grave offense warranting dismissal on the first act of commission. The Carrier argues the Claimant's suspension is lenient in the context of his prior record.

The Organization also maintains the Carrier failed to sustain its burden of proof that the Claimant was guilty of dishonesty because the Carrier failed to show Claimant intended to commit a dishonest act. The Organization argues the Claimant interpreted the Assistant Trainmaster's remark as permission to remove the wood. Further, the Organization argues the fact that the Claimant removed the wood "in the middle of the afternoon, in plain sight of anyone in the Steel Car Shop and the Office of the Train Dispatcher" indicates that "there was clearly no intention to commit any dishonest act."

In support of its argument that it had sufficient evidence to support Claimant's culpability, the Carrier points to Claimant's own testimony. The Claimant testified that on July 21, 1990, he removed wood from the area of the Steel Car Shop in Joliet, he knew the wood was the property of the Carrier, and although he did not have permission to take the wood, he did not intend to take the wood dishonestly. In addition, the Carrier notes the incident occurred on a Saturday when no personnel were on duty in the Steel Car Shop area, and the white station wagon was parked in such a manner that it was not readily visible from Train Dispatcher's office.

With respect to the substantive charge, this Board finds that there is sufficient probative evidence in the record to establish that the Claimant is guilty of the charge against him. Specifically, the Claimant's own admission indicates he removed wood from the property of the Carrier without permission.

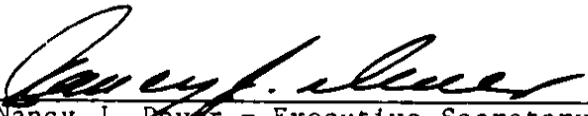
With respect to the disciplinary action, the Board will not set aside discipline imposed by a Carrier unless it is unreasonable, arbitrary, or capricious. Third Division Award 26160. In this case, the Claimant is guilty of dishonesty. Dishonesty, in any form, is a matter of serious concern, and dishonesty usually and frequently results in dismissal from the service of the Carrier. See Third Division Award 16168. The Carrier's own disciplinary policy permits the Carrier to dismiss an employee for dishonesty regardless of demerits. However, in this case, a 45 day suspension is unreasonable because the Claimant has more than thirty-five years of service, and no disciplinary action has been taken against him since 1983. Therefore, this Board reduces the Claimant's suspension to ten days.

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 12th day of June 1992.