

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30429
Docket No. MW-30858
94-3-92-3-701

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The discipline imposed upon and subsequent dismissal of Foreman M. M. Chavez for allegedly '...selling company property without proper authority and using company equipment for other than company business...on January 27, 31, February 27, March 05, May 24, 25, June 01, 07, 13, July 11, 14, 18, August 03, and 20, 1990....' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement. System File MW-91-83/501-93-A SPE)
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

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 employee 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.

Prior to his dismissal, Claimant had established and held seniority as a Track Foreman. He had 27 years in Carrier's service. At the time of the incident precipitating this claim, Claimant and his crew had been replacing crossties at grade crossings in the vicinity of Fabens, Texas, over a period of several months. As the old ties accumulated, the supervising Roadmaster instructed Claimant to dispose of them. Claimant complied with the Roadmaster's instructions by trucking the scrap crossties from the right of way and stockpiling them at his home or taking them directly to "customers." He received a total of \$1,288.00 for sale of the crossties, which he retained.

Claimant admitted his actions during testimony at Carrier's subsequent Investigation. The only defense offered by Claimant was that he "had the authority to dispose of [the crossties]", and thus felt he was not committing any sort of violation. At the Hearing he admitted to having some doubts about whether he was entitled to sell the ties, but did not feel obligated to clarify the matter with any Carrier supervisor. There is no evidence on the record that Claimant used Carrier's vehicles to transport the ties to his house or directly to customers, but in light of his admitted theft, that issue is moot.

The Organization suggested that in view of Claimant's seniority and long (18-year) unblemished record, he should not have incurred the ultimate penalty of dismissal. In this case, Claimant's extended seniority with Carrier suggests that he should have been well aware of any Rules prohibiting his conduct. It has been consistently held by this and other Boards that dishonesty constitutes sufficient grounds for dismissal irrespective of the employee's past record or length of service. Moreover, we have also held that a leniency reinstatement is made, almost without exception, at the sole discretion of the Carrier. Accordingly the instant claim is denied.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.