

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim for former B&B Helper J. G. Stolfa, Eastern Division, for reinstatement to service with seniority, vacation, all benefit rights unimpaired and pay for all wage loss and/or otherwise made whole.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant, a B&B Helper on the Eastern Division, was charged with possible violation of Rules 2, 16 and 29 of the General Rules for the Guidance of Employees dated 1978, Form 2626 Standard, concerning the claimant's alleged appropriation of Company property (motorcycle parts) from the Freight House at Leavenworth, Kansas on June 3, 1982 while employed as a B&B Helper on B&B Gang No. 11. Pursuant to the investigation the claimant was discharged for violation of the above enumerated rules.

The entire testimony and evidence of record has been carefully studied. The testimony indicates that the claimant was present when his foreman instructed the employees to either not touch or not remove any of the property from the building. The crew was going to board up the windows as a measure of protection.

There is a great deal of evidence introduced as to whether the property belonged to the Santa Fe. The evidence establishes that this property did, in fact, belong to the Carrier.

The claimant contended that he believed the motorcycle rim or wheel could be sold to him by one of two men and that he was negotiating with one of them to purchase the wheel. Some of the claimant's fellow employees testified that he removed the wheel and others testified that he removed a rim. The value of the wheel or rim was approximately \$60.00.

The evidence is undisputed that the claimant removed the wheel in violation of the instructions of his foreman. Other employees were interested in some of the property in the building but followed the proper procedure and spoke to the agent at the Santa Fe to purchase the property.

The claimant contended that he assumed Mr. Gardiner, who owned the Moped Shop, had the authority to allow him to remove the wheel. Such an assumption was unjustified, particularly in view of the fact that the claimant's foreman had instructed him and the remainder of the crew not to remove any of the property from the building.

The Organization has introduced a letter from Marshall Gardiner of S & P Imports which indicates that he was negotiating with the Santa Fe to obtain the property involved. However, the evidence establishes that the claimant removed the property prior to any discussion with Mr. Gardiner.

Under the circumstances there is no justification for setting the discipline aside.

AWARD: Claim denied.

  
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Preston J. Moore, Chairman

  
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Organization Member

  
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Carrier Member

Dated August 16, 1983 at Chicago, Illinois