

Award No. 1
Case No. 1
File: 1635-167

PUBLIC LAW BOARD NO. 2186

Parties to Dispute:

Brotherhood of Maintenance of Way Employees
and
The Alton & Southern Railway Company

Statement of Claim:

Claim of the System Committee of the Brotherhood
that:

(1) The dismissal of Caboose Supplyman John W. Dace was without just and sufficient cause and on the basis of unproven charges.

(2) The Carrier shall restore Claimant Dace to service with all rights unimpaired and with pay for all time lost since July 1, 1976.

Opinion of the Board:

Claimant was discharged from Carrier's service after an investigation at which he was found guilty of participating in a theft of goods consigned to the Carrier's care.

It was charged that on the night of June 30, 1976, he was on a trailer in piggy back service, and handed barbecue grills down to a second person. One grill was loaded into a vehicle which was subsequently stopped, searched and the contraband discovered.

What is the evidence?

A special agent for the railroad had been observing the theft from some 10 to 15 feet, according to his testimony. On Page 7 of the transcript of the investigation, the agent said:

". . .As I testified earlier, I observed John Dace come out of the trailer in question and I observed Eugene Stanford place a box from John Dace into the trunk of Mr. Stanford's car."

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It was the Stanford car which was stopped, and the grill found in the trunk. Stanford then gave a statement to the agents, it said (Page 11):

" . . I asked Gene Rey did he want one, he said two, the caboose man John Dace passed two down to me from inside the trailer where he was, I took one box in put it in the trunk of my car in (sic) drove off and was stopped by a special agent. . ."

On the Organization's behalf, there was a presentation that the darkness of the night might have well prevented the agent from recognizing the claimant at the trailer. It also asks why the agent did not arrest claimant at the time of the removal of the grills, and the Carrier relies on the testimony of the agent which says he was watching the departing car to determine its direction so he could radio another agent, which he did.

Claimant did not have in his possession any of the goods.

Claimant, a co-defendant testified, had been directed to other duties across the yard at this time of the night. We are lacking in specific, reliable details of this claim of his whereabouts, however.

The Organization says that the statement of co-defendant Stanford was made under duress. It was later repudiated by him. However, it is a statement written by hand and signed. While it was given the night in question, we have been given no substantive reason to believe it was improperly received or that it contained statements other than those Stanford believed to be true.

In other cases growing out of the incident, employees were returned to Carrier's service without pay for time lost. In each, there were different circumstances. The employees were in different relationship to the act, and each must stand on its own merits. Questions of procedural defects in the handling of the investigation have been disallowed in those cases and are not sustained here.

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We are compelled to find from the testimony contained in the transcript that Carrier met its burden of proving Claimant participated in the unauthorized removal of goods from a customer's trailer, and demonstrated a gross disloyalty to the employer.

Findings:

That the agreement was not violated.

Award:

Claim denied.

Signed this *2nd* day of *January* 1979 at St. Louis, Missouri.



John B. Criswell, Neutral Member



O. B. Sayers, Carrier Member



M. A. Christie, Organization Member