

PUBLIC LAW BOARD NO. 2267

Award No. 6  
Case No. 7

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
  
and  
  
Union Pacific Railroad Company

STATEMENT  
OF CLAIM:

1. That the Carrier violated the Agreement when they discharged Sectionman M. R. Fordham, April 24, 1978, said dismissal being harsh and disproportionate to the offense committed.
2. That the Carrier shall reinstate M. R. Fordham to his former position with seniority, vacation and all other rights unimpaired and compensate him for loss of earnings account the Carrier's improper actions.

FINDINGS:

By reason of the Agreement dated August 31, 1978, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Grievant was dismissed from the service of the Company on charges of being in violation of Rule 700 and 708 of Form 7908 "Union Pacific Railroad Rules Governing the Duties and Department of Employees, Safety Instructions, and Use of Radio", effective October 10, 1974, which read as follows:

"700. Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

"708. Unless specifically authorized, employees must not use the railroad's credit and must neither receive nor pay out money on the railroad account. Property of the railroad must not be sold or in any way disposed of without proper authority. All articles of value found on railroad property must be cared for and promptly reported to proper authority."

Specifically, Grievant was dismissed for alleged theft of railroad ties.

In response to the Hearing Officer's question, "...did you remove the ties on Saturday evening near the bunkhouse at Thermo?", Grievant replied, "18, yes, I did." (Tr., p. 38). In response to the question, "...you were not authorized to take these; is that correct?", Grievant answered, "Yes." (Tr., p. 39). Further, when the Hearing Officer stated: "As I understand it, you had no authority to remove these 18 ties from Thermo, but because nobody told you specifically not to take them, you have the authority; is that correct?", Grievant answered: "No. I didn't say I had the authority. I had permission for some ties." The Hearing Officer then asked: "You had permission for these 18 ties?", and Grievant answered: "Not particularly these 18 ties, 4 ties." Then the Hearing Officer asked: "With no specific location?", and Grievant answered, "No specific location." (Tr., p. 44). Grievant admitted telling a fellow employee who observed Grievant taking the 18 ties at Thermo, and who testified to the details of the taking (Tr., pp. 32-36), that he told the fellow employee not to tell the Foreman of the taking. (Tr., p. 42).

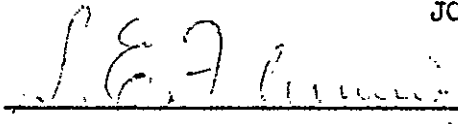
The evidence is clear beyond any doubt that Grievant took the 18 railroad ties at Thermo with the knowledge that he did not have authority for such taking and with the manifest intention to conceal such taking.

Theft is a grave offense, and an employer is justified in terminating the employment relationship of a proven thief. The dishonesty, disloyalty, and untrustworthiness of a proven thief are most serious, and the discipline of dismissal is not excessive or unreasonable. Circumstances of mitigation, such as lack of knowledge that the ties were not to be taken, are absent here; the ties were known by Grievant to be reusable and intended for reuse, the ties were not scrap, and Grievant's taking was by stealth and concealment. Certainly, in the circumstances of this case, the generosity of the Carrier in freely making available scrap ties to employees, including Grievant, does not justify or mitigate the gravity of the Grievant's offense.

A W A R D

1. The Carrier is not in violation of the Contract.
2. The claim is denied.

  
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

  
S. E. FLEMING, Employee Member

  
E. R. MYERS, Carrier Member

Dated: March 19, 1980