

Award No. 22  
Case No. 10

Public Law Board No. 2363

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Louisville and Nashville Railroad Company

STATEMENT  
OF  
CLAIM:

1. The dismissal of Truck Driver G. S. Coleman because of an alleged "attempt to remove useable cross ties from Company property at South Nashville Yards about 7 p.m. on May 12, 1977 without proper authority" was unwarranted, without just and sufficient cause and on the basis of unproven charges.

2. Truck Driver G. S. Coleman be reinstated with seniority and all other rights unimpaired and he be compensated for all wage loss suffered.

FINDINGS:

Claimant was dismissed for attempting to remove useable cross ties from Company property. He and his son were observed loading a number of cross ties in his own pickup truck at about

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6:30 p.m. Investigation established that most of the ties were useable and that claimant had not obtained a permit from the Division Engineer's office to remove them, although he was aware of that requirement.

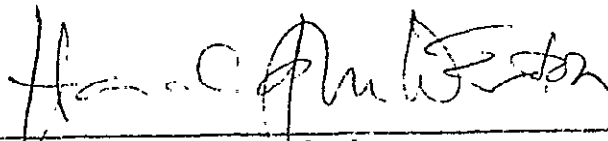
While Carrier, as a regular practice, has given away many scrap ties, it is a reasonable exercise of managerial authority to control their disposition by the use of the permit system. Claimant was certainly at fault in taking it upon himself to appropriate useable ties without obtaining a permit. His testimony that Roadmaster Finch and Assistant Division Engineer Hadden verbally authorized him to remove the ties without a permit is controverted by Messrs. Finch and Hadden.

On the other hand, we are not persuaded that claimant really intended to defraud Carrier. There is testimony that he was under the impression that he could take the ties. In any event, under all the circumstances, it is our opinion that dismissal of this employe who has an unblemished record of 24 years service for Carrier, is inappropriate on this record. We will direct Carrier to offer him immediate reinstatement with seniority rights unimpaired but without back pay.

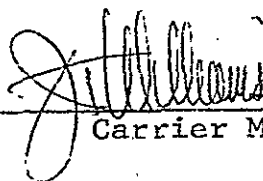
AWARD:            Claimant reinstated without back pay.    Award  
to be effective within 30 days.

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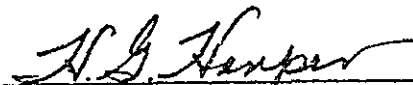
Adopted at Louisville, Kentucky, on  
January 30, 1980.



Harold M. Weston, Chairman



Carrier Member



Employee Member