

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Seaboard System Railroad (former L&N Railroad)

STATEMENT
OF
CLAIM:

Case No. 123: J. H. Melton be re-instated and paid 8 hours straight time each work day from May May 18, 1984 and all overtime incurred by Gang he was assigned to at that time. Also, that Mr. Melton be restored all rights that he may be entitled to under the October 1, 1973 Agreement.

FINDINGS:

Claimant, a carpenter on B and B Gang 202, was dismissed from Carrier's service for removal of pipe from Carrier's property for personal use, and for using a company credit card to purchase gasoline for use in his own motor vehicle.

The latter charge is not supported by the record.

Foreman Moses testified that he requested claimant to use his own vehicle to transport several employees to Loyall Yard to free a door so that a blocked engine could be removed. It is his further testimony that since claimant's car was out of gas, and claimant had no money, Moses instructed him to use a company credit card to obtain ten dollars worth of gas in order to make the trip and meet a real emergency. According to Moses, they had tried unsuccessfully for an hour to start the company truck.

The burden of proof rests with Carrier and it is not helpful to its cause merely to ridicule Moses' explanation. It is incumbent upon Carrier to meet that explanation with persuasive evidence. Carrier failed to pursue that course and we do not find Moses' testimony unacceptable on its face.

As to the property removal count, the record shows that claimant did remove a company culvert from Carrier property on February 15, 1984. He was authorized to do so, however, and transported it in the Gang's truck with instructions to take it to the Corbin yard.

According to Carrier, the culvert did not reach Corbin until about four weeks later. However, there is no showing as to when it actually was left there. General Inspector Elliott and Auditor Moore testified that claimant stated on March 6, 1984 that the culvert was in his yard. Yet no attempt was made by Carrier to look at claimant's yard until 5:30 p.m. March 8, when it found a newly purchased culvert in place there. It developed that that culvert had been purchased by the Meltons at a local store on March 7, 1984. The company culvert was at no time shown by direct evidence to be on claimant's property or in use there.

Claimant denied making personal use of a culvert belonging to Carrier. He testified, in response to the Hearing Officer's questions, that "To the best of my knowledge" he delivered the culvert to Corbin on the same day he left the job site with it.


Such extreme disciplinary action as dismissal must be based on competent and persuasive evidence. The burden of proof in that regard, of course, rests with Carrier. Yet this record indicates that no timely or in-depth investigation was conducted in

this case, although Carrier possessed the means to make such an investigation. It would have been an easy matter to have checked claimant's property in February and before March 8. Instead, Carrier rests its entire case and claimant's discharge on a statement allegedly made by claimant to Carrier investigators in an informal discussion. The fact that a newly purchased culvert was found in claimant's yard does not establish that he had been making personal use of Carrier's culvert, and this Board will not engage in conjecture with respect to that point.

The record developed in this case is not sufficiently strong or clear to provide a basis for upholding the charges levelled against claimant. We will accordingly sustain the claim in its entirety. While this Board, it should be pointed out, originally reached a different conclusion, it did so on a basis other than the culvert incident, and the Employee member of our Board brought the error to our attention before the award was adopted.

AWARD: Claim sustained. To be effective within 30 days.

Adopted at Jacksonville, Florida, Dec. 19, 1985.


Harold M. Weston, Chairman


Carrier Member


Employee Member