

PUBLIC LAW BOARD NO. 3445

Award Number: 48

Case Number: 48

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, Ronald Walker, was dismissed from service on April 17, 1987 for alleged conduct unbecoming an employee in connection with theft of a VCR from a company trailer. Claim was filed in accordance with Railway Labor Act and other agreement provisions. Employees request reinstatement with pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

By letter dated March 17, 1987 the Carrier advised Claimant to attend a formal investigation on charges that he had exhibited conduct unbecoming an employee in connection with the alleged theft of a VCR on June 21, 1985.

The formal investigation was held on April 2, 1987. By letter dated April 17, 1987, Claimant was dismissed based on evidence adduced at the investigation.

The question to be resolved in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the

remedy be.

On June 21, 1985, employe B. Parrish reported the theft of his VCR from the gang trailer in which he was staying in Danville, Virginia. Neither the Danville nor the Carrier's police developed a suspect in their investigations of the theft and the case was closed on August 7, 1985. In early December, the Danville Police notified the Carrier, through Parrish, that they had recovered the VCR and traced its theft to Claimant through a series of pawn slips. When questioned by the police, Claimant confessed to the theft. At the investigation, Claimant testified that he bought the VCR from a stranger for \$25 on the day of the theft and then pawned it later that day for \$100. He also asserted that he had been coerced into signing an admission by the Danville Police.

The position of the Organization is that Claimant was dismissed unjustly. The Organization contends that the Carrier did not respond to its appeal of Claimant's dismissal within the time limits established in Rule 42 and that by virtue of this procedural defect, Claimant is entitled to the relief claimed without consideration to the merits of the case. The Organization later seems to assert by implication that despite the Carrier's allegation of having responded to the appeal, the Organization did not receive the response. The Organization cites numerous awards, but gives no explanation of their significance to the matter before the Board. The Organization presents no argument on the proof of Claimant's guilt of conduct unbecoming.

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The position of the Carrier is that Claimant was proven guilty of conduct unbecoming an employe and was properly dismissed for breach of his obligation not to commit criminal acts. The Carrier cites the circumstantial evidence against Claimant that was developed by the Danville Police and his admission to them as clear proof of his guilt. The Carrier further maintains that the gravity of Claimant's offense justifies dismissal.

After review of the entire record, the Board finds that Claimant was dismissed for just cause.

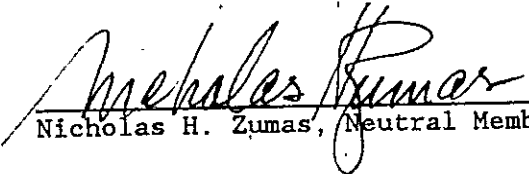
The Carrier has established through substantive credible evidence in the record that Claimant had stolen the VCR from a fellow employe. The evidence adduced at the investigation, including Claimant's admission and the circumstantial evidence against him, provide a more than reasonable foundation for the Carrier's discipline of Claimant. Criminal activity of the sort committed by Claimant is intolerable and clearly conduct unbecoming an employe. Claimant owed Parrish more respect than to steal from him or any other employe. Moreover, Claimant owes the Carrier a duty not to behave in a dishonest, criminal and anti-social manner. Claimant breached that obligation and the Carrier responded in a reasonable fashion which was neither arbitrary, capricious nor discriminatory.


The Organization's procedural argument is not persuasive.


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AWARD

Claim denied.


Nicholas H. Zumas, Neutral Member


Carrier Member


Organization Member

Date: JUNE 12, 1989