

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
as the Representative of
Silas Stacy

vs.

CONSOLIDATED RAIL CORPORATION

Case No. 36

Amended No. 32

STATEMENT OF CLAIM

Disciplinary case of dismissal of Silas Stacy, Marion
Yard, Marion, Ohio.

OPINION OF THE BOARD

Claimant Silas Stacy was, at the time of his dismissal from
service, a Maintenance of Way Repairman at Marion Yard, Marion, Ohio.
On January 25, 1984, he was notified to attend a scheduled hearing
in connection with charges that he stole Company property and was
not performing his assigned duties. Those charges read as follows:

- (1) That on January 23, 1984, at approximately
4:30 PM in Marion Yard you were observed
stealing and using Company Property for your
own use.
- (2) You were not performing your assigned duties
as instructed, while on Company time.

A hearing into the matter was held on February 7, 1984. A transcript of that hearing is a part of the record of this case. As a result of that hearing, Carrier found Claimant guilty as charged and dismissed him in all capacities from Carrier's employ. A grievance contesting Carrier's action was filed by the Organization. It was processed in the usual manner on the property. It was denied at each step in the procedure and has been placed before this Board for final resolution.

POSITION OF THE PARTIES IN THIS DISPUTE

Carrier

Claimant was observed by a Carrier Official changing the oil in his private car while on duty. The oil he was pouring into his car was Carrier's oil. This constitutes stealing and failure to perform assigned duties. Stealing from Carrier is a violation of Carrier Rules, as well as a violation of the law. Carrier's action to remove Claimant for this offense is justified by the seriousness of his violations and has been supported by numerous Referees' decisions in the railroad industry. It is common knowledge among workers at all levels in this industry that if you are caught stealing, you are fired. Carrier's actions in the instant case should be upheld.

The Organization

The Organization admits that Claimant did change the oil in his car while on duty, but it denies that the oil he used was Carrier's oil. His dismissal was arbitrary and capricious. It further argues that the final Notice of Removal delivered to Claimant was dated February 10, 1984. That was prior to the time the transcript of the hearing was prepared and sent to Carrier Officials. It also points out that the Carrier Official who made the decision to dismiss Claimant was not at the hearing. Apparently, he made a decision without benefit of the transcript or personal attendance at the hearing. This constitutes a clear case of prejudgment and is a violation of due process that should, on its own, justify setting Carrier's actions aside. (Carrier countered this point by arguing the date was a typographical error.)

The Organization also argued that Claimant was questioned about the oil incident by three Carrier Officials who did not advise Claimant of his right to have a Union representative present. This is a violation of due process, as well as labor law, and should serve to support the setting aside of the discipline. The Organization finally states that Claimant has 18 years of loyal service, which should be considered as mitigation.

DISCUSSION AND AWARD

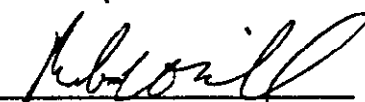
This Board has carefully reviewed the total record of this case, including each claim and counterclaim both substantive and procedural presented by each party. Based on this complete review, it is the opinion of this Board that Claimant has been appropriately disciplined by being held out of service to date. It is also the opinion of this Board that Carrier has made its point with its employees in regard to their use of Carrier property.


In consideration of the positions of the parties on each issue and Claimant's long years of service, this Board directs that he be returned to work with full seniority but without pay for lost time or benefits.

AWARD

Claimant shall be returned to work per Opinion of the Board. Carrier is directed to implement this award within 30 days of its adoption.


R.E. Dennis, Neutral Member


R. O. Neil, Carrier Member


Date of Adoption


J. Todd, Employee Member