

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 3689

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

AWARD NO. 1

Case No. 1

STATEMENT OF CLAIM

1. The fifteen (15) days of suspension imposed upon Sectionman C. Pratt for alleged violation of "Genral Rule B" and "General Regulation 708" was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File 4-15-12-14-55/013/210-P).

2. The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

By letter dated November 10, 1982 the Claimant was advised to attend an investigative hearing

to develop facts and determine responsibility in connection with your use of Company material ties which were sold for personal gain on September 10, 1982, indicating violation of General Rule B, "Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority of the railroad for an explanation", and General Regulation 708, in part, ". . . Property of the railroad must not be sold or in any way disposed of without proper authority . . .", of Form 7908, "Rules Governing Duties and Department of Employees, Safety Instructions and Use of Radio" effective October 1, 1974.

Simultaneously the Claimant was withheld from service pending the hearing under the provision of Rule 48 (o), which reads as follows:

(o) It is understood that nothing contained in this rule will prevent the supervisory officer from suspending an employee from service pending hearing where serious and/or flagrant violations of Company rules or instructions are apparent, provided, however, that such hearing shall be conducted within thirty (30) calendar days from the date the employee is suspended and a decision rendered within twenty (20) calendar days following the date the investigation is concluded.

Following the hearing the Carrier imposed a 15-day disciplinary suspension, inclusive of the time already withheld from service, on the Claimant.

Despite procedural objections from the Organization, the Board finds that the hearing was conducted in a "fair

and impartial" manner. The Organization and the Claimant were specifically advised in the notice of hearing as to the alleged circumstances. The hearing officer did not exceed the limits of propriety in questioning the Claimant. Any allegation of "prejudgment" on the hearing officer's part did not prohibit the Organization and the Claimant from making a full defense of their position.

There is no dispute as to the facts of the incident involved herein. The Carrier has an established practice of giving used track crossties to employees and to others. The Claimant received a number of these ties from his Section Foreman up to September 10, 1982. The Claimant sold 12 of these ties to a private individual for \$48. When this became known to a Carrier official, the suspension and investigative hearing followed.

Much of the hearing centered on whether or not the ties were in fact Carrier property. When the ties were "given" to the Claimant, there can be no doubt that they became his property. The Carrier argues, however, that it has a firm policy that employees are prohibited from disposing of such ties for their personal gain. Thus, the offense concerned the Claimant's sale of the ties, given to him on a conditional basis, according to the Carrier.

The issue therefore concerns whether or not the Claimant was fully aware of the Carrier's no-resale policy. Nothing was said by the Section Foreman to the Claimant about such condition when the ties were given to the Claimant. Nevertheless, the Carrier maintains that the Claimant knew of the prohibition. In his testimony, the Carrier's Special Agent stated:

Approximately one year ago Mr. Pratt /the Claimant/ was explicitly warned against selling ties by Mr. Jordan, /Roadmaster/ in my presence.

The Claimant did not contradict this statement in his testimony. Such denial could readily have been made as an affirmative defense in this interchange with the hearing officer:

Q. Mr. Pratt, are you aware that it's against company policy to sell ties for personal gain?

A. Well, I don't know if you call it personal gain or not, but --

Q. Are you aware that it's against company policy for employees to sell ties and receive money for them?

A. Well, I don't know.

The charge refers to disposal of "property of the railroad without proper authority". The Board finds it reasonable to assume that employees are bound by the

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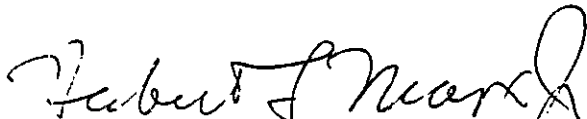
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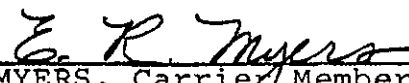
no-resale prohibition even when such property is turned over to them for any personal use. The Carrier is convinced that the Claimant was aware of such restriction, and the Board has no basis to find otherwise.

A W A R D

Claim denied.


HERBERT L. MARX, JR., Neutral Member


C.F. FOOSE, Employee Member


E.R. MYERS, Carrier Member

New York, N.Y.

DATED: 4-12-85