

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT
OF
CLAIM:

The dismissal of Cook H. L. Gordon was improper and he shall be reinstated with all seniority and other rights unimpaired and compensation for all wage loss suffered.

FINDINGS:

Claimant, a cook with 5 1/2 years seniority, was dismissed on August 30, 1985 for "dishonesty" and unauthorized removal of material from railroad property. At the time in question, he served as one of three cooks assigned to a floating gang of 41 men. Among other responsibilities, he was in charge of purchasing supplies needed for the gang's meals.

Food items purchased by claimant in the course of his duties were charged to Carrier as each member of the gang paid an equal proportionate share (\$17.50) of the grocery bill. Carrier found, after a hearing had been held, that claimant had taken a grocery bag of food he had thus purchased out of the gang's kitchen and proceeded to place it in his car and bring it to his home. Another sack of food he had purchased was left in the kitchen.

According to Carrier, the sacks contained "numerous meat products which included steaks, chicken, pork chops, sausage and hamburger meat, all frozen and uncooked." Carrier also concluded that claimant had used his position as gang cook to obtain tobacco for his own personal use, the cost of the tobacco being absorbed in the cost assessed members of the gang.

Carrier's findings are based on testimony of Foreman Fussell and Mechanic Cox and, to some extent, on claimant's own testimony. It also referred to Supervisor Wolf's testimony, but Wolf's testimony consisted, in the main of hearsay and is not materially helpful. While there is also evidence that some tobacco was charged to the gang's food purchases over a period of several weeks, the record is insufficient to establish that claimant used or was responsible for that tobacco. The evidence as to the tobacco will accordingly be given no weight. We will not engage in conjecture or assumption in determining whether Carrier has shown that an employe has been "dishonest." It is incumbent upon Carreir to establish guilt by persuasive competent proof.

Claimant testified that he did remove the sack from the kitchen, but that it contained scraps and leftovers from the previous meal. These "scraps", according to claimant, included half a chicken and "maybe five or six pieces of steak" and "three to four pieces of pork chops." It is claimant's testimony that the meat was fed to his dog at various times. He testified that the steak and pork were uncooked and there was nothing to the chicken "but the boiling part."

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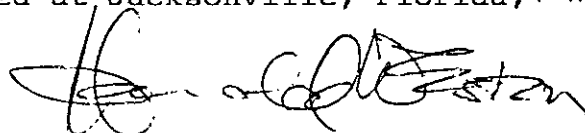
Claimant testified further that the foreman was aware that it was the cooks' practice to dispose of waste and that no proper sanitation facilities were available near the camp site for such disposal. He testified that the temperature was close to 100 that day and the meat was no longer in good condition for the men to eat.

No evidence to the contrary was introduced as to the condition of the meat, the time it had been around or the weather. The record is incomplete with respect to those material points and we will not engage in broad assumptions in passing upon this claim or any other discipline case. Nor will we base our decision on mere suspicion or what may allegedly be common experience.

Claimant will be reinstated with seniority ^{un}impaired and no back pay. Charges of dishonesty must be clearly established as to all essential particulars by competent and persuasive proof. Back pay is not awarded since we are not persuaded that claimant was entirely blameless in this matter. Our holding is simply that charges of dishonesty are not established by the record.

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

Adopted at Jacksonville, Florida, March 17, 1987.



Harold M. Weston, Chairman

W. H. Moore, Jr.
Carrier Member

H. B. [Signature]
Employee Member