

PUBLIC LAW BOARD NO. 4877

RECEIVED
FEB 28 8 58 AM '91
COMMUNICATIONS SECTION

FRATERNAL ORDER OF POLICE

"FOP"

VS.

CONSOLIDATED RAIL CORPORATION

"CARRIER"

CASE NO. 1
AWARD NO. 4

(T. M. Lillash)

STATEMENT OF CLAIM

Appealing the discipline of dismissal assessed Patrolman T. M. Lillash by Form G-32 dated March 1, 1988, for the following offenses:

Charge #1, Neglect of Duty

In that you failed to report exceptions, thefts, and recovery of merchandise from trailer #XTRZ-259319 and container #JSLU-202388 at the Collinwood Trailvan Terminal which came to your attention at approximately 0530 HRS, 1/23/88.

This is in violation of Section 2.0 - 2.4, Page 2-1 of the Conrail Police Department Policy and Procedures Manual effective 10/18/84.

2.0 Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner which will maintain the highest standard of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by, but not limited to:

2.4 The failure, on or off duty, to take appropriate action on any manner coming to their attention which involves the interest of the Corporation.

Charge #2, Failure to properly perform assigned duties;
Charge #3, Dereliction of Duty;
Charge #4, Making False Statements;
Charge #5, Falsifying your Notebook;

OPINION OF THE BOARD

Claimant was an officer on Carrier's police force for approximately 12 years. At the time of the incident now at issue, he was a member of the Cleveland Division. On January 22, 1988, Claimant was scheduled to conduct surveillance with Officer Takach in the Collinwood Terminal in Cleveland, Ohio. The Terminal had been the target of a significant number of thefts in the proceeding week. Prior to taking their positions on the stakeout, Claimant and Officer Takach drove Carrier's patrol vehicle to check on Officer Takach's father's house in a suburb of Cleveland. When they returned, they took positions for the stakeout. Claimant and Officer Takach were to remain in radio contact and communicate any suspicious activity. The evening passed uneventfully, until an hour or so immediately proceeding the end of the shift. Claimant thought he saw a figure in the distant shadows. Claimant and Takach then investigated, and found a van broken into with merchandise taken. Claimant then put merchandise back into the trailer. Officer Takach reported the theft to his superiors. As a result of this incident, Claimant was charged with five offenses noted above. A hearing concerning these charges was held on February 18, 1988. Claimant contended that he put the merchandise back into the trailer to entice the perpetrators back to the site. Officer Takach, however, contended that Claimant was attempting to cover up the theft. Subsequent to the hearing, Carrier dismissed Claimant.

Officer Takach received a five day suspension for his conduct in the incident.

Carrier maintains the following: Claimant has admitted his guilt to charges No. 3 and 5. Accordingly, Carrier need not prove these allegations. As to the remaining allegations, Claimant failed to assume the proper location for a surveillance. In addition, he failed to properly report the incident and record it in his notebook. He then tried to cover up for his negligence, and perhaps sleeping, by attempting to get Officer Takach to agree to not report the matter. Claimant is therefore guilty of all five allegations. Each of these charges is, in and of itself, a serious offense. Each involves moral turpitude and/or actions bordering on dishonesty and each charge, standing alone, would require serious discipline. When all five charges are considered, however, there can be no doubt but that dismissal was appropriate in this case.

The Organization asserts the following: Claimant was treated inequitably and improperly by being discharged when Officer Takach only received a five day suspension. Moreover, it was Officer Takach who initiated the trip to his parents house. While Claimant may have approached the resolution of the crimes involved incorrectly, that does not merit his dismissal from the force. Carrier has not proven that Claimant intentionally concealed the exceptions in a coverup. Claimant's explanation of his actions is worthy of credence. Accordingly, this claim must be sustained.

The Board has determined that the claim must be denied.

The record evidence establishes that Claimant is guilty of the offenses alleged. Moreover, the Board must reject the Organization's argument that Claimant was subjected to disparate treatment. While it is true that Officer Takach received less discipline, his offenses were not equivalent to those of Claimant. Claimant was guilty not only of improperly performing his work, but also the more serious offense of attempting to cover-up his inadequacies. In these circumstances, the Claimant's own actions must result in the claim being denied.

AWARD

Claim denied.


J. H. BURTON
CARRIER MEMBER


E. R. FLAKE
ORGANIZATION MEMBER


S. E. BUCHHEIT
NEUTRAL MEMBER

FEB 14 1991