

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 10

Case No. 10

Carrier File No. BMW-D-130

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Kevin Cross was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Cross shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule "K" of the Scheduled Agreement.

F I N D I N G S

The Claimant, a Truck Driver with three years' service, was subject to an investigative hearing under the following charge:

CHARGE ONE: Alleged Violation of Rule K of the NRPC Rules of Conduct which reads in part, "Theft, misappropriation, or use for personal gain of Amtrak

funds, property or services is prohibited. Employees must use Amtrak funds, property or services with care and economy and protect them from theft or abuse".

In that you used a company vehicle Swivel Dump Truck TG94859-T66401, Mass. Registration #T-750 for your personal use on March 27 and 29, 1990 and on April 2, 1990.

Also in that on March 29, 1990 at your father-in-law's residence at 144 High Street in Danvers you were observed dumping crushed stone owned by Amtrak from a company vehicle Swivel Dump Truck TG94859, T66401, Mass. Registration #T-950 without authorization. Also in that you are in unauthorized possession of used MBTA railroad ties at your father-in-law's residence at 144 High Street in Danvers.

Following the hearing, the Carrier found the Claimant guilty, and the Claimant was dismissed from service.

During the course of the hearing, the Claimant admitted that he had taken a Carrier truck to his father-in-law's residence (near his own residence) where it had remained overnight on three occasions, without permission from or knowledge of the Carrier.

At this property, there was found 25 railroad ties, convincingly identified as belonging to the MBTA, for which the Carrier acts as contractor in certain functions. The Claimant's explanation as to the presence of the ties was entirely unconvincing to the Carrier. Among other factors leading to the conclusion that the Claimant had misappropriated the

ties was his production of an alleged "receipt", containing information clearly not matching the ties in question.

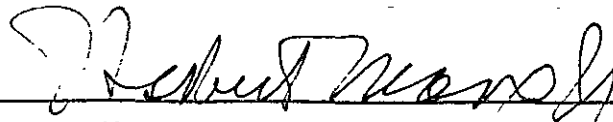
As to the allegations concerning crushed stone, the Claimant admitted "sweeping out" some remaining stone from the truck, a highly improbable explanation for the presence of a quantity of stone matching that which the Claimant had in fact transported for Carrier purposes in the course of his work.

The Board notes that the Organization correctly states that there was no direct observation of the Claimant's placement of the ties and stone in his father-in-law's yard. However, the explanations given by the Claimant as to how the items were obtained other than by being misappropriated from the Carrier were contradictory and evasive.

The Board has reviewed the record and finds that the Carrier had ample justification for its conclusion concerning the ties and probably the stone. As to the unauthorized use of the truck, this was fully admitted by the Claimant. The charge against the Claimant is a gravely serious one and is not of the type properly subject to corrective disciplinary measures. As a result, the Board finds no basis to disturb the dismissal action taken by the Carrier.

A W A R D

Claim denied.

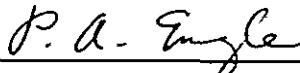


HERBERT L. MARX, JR., Chairman and Neutral Member



B. A. WINTER, Employee Member

*I DISSENT*



P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: *May 16, 1991*