

Award No. 5

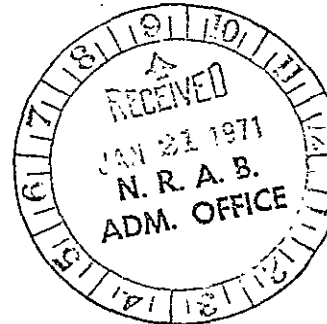
Docket No. 272

PUBLIC LAW BOARD NO. 566

Pennsylvania Federation Brotherhood of Maintenance
of Way Employees

vs.

PENN CENTRAL TRANSPORTATION COMPANY



STATEMENT OF CLAIM:

CENTRAL REGION

System Docket No. 272 - Northern Division Case No. N-135

Protest by M. S. Fuoss relative to discipline of dismissal imposed as a result of trial held on the following charges: Unauthorized acquisition of material during the periods December 1963, through December, 1966, inclusive."

OPINION OF BOARD:

Claimant, in the employe of Carrier for approximately 45 years (with a clean record except for a reprimand because of a safety rule violation) was charged with:

"Unauthorized acquisition of material during the periods December 1963 through December 1966, inclusive."

During the period in question, Claimant was employed as a Carpenter Foreman. As such Claimant was in a position to purchase materials and supplies.

The purchasing procedures utilized were admittedly "unorthodox," but, it is contended, acceptable in the Williamsport area. Under the authority of Blanket Orders, material was purchased in one of two ways: (1) Direct purchase from the Lundy Lumber Company, or (2) Purchase from another store which then billed its invoice to the Lundy Lumber Company, which in turn billed Carrier. Carrier would be charged for "lumber" delivered, even though other material and supplies were received.

Throughout the investigation and hearing, Claimant contended that he had been authorized or instructed to make all of the purchases (except one, discussed below) by the Supervisor of Structures, Supervisor of Material, or the District Engineer. It should be noted that none of the individuals occupy-

ing those positions at the time was called by Carrier to provide any testimony regarding Claimant's contention of instruction or authorization.

Claimant did admit that the one exception was the purchase for his own use of a "gothic wood fence," and its price, \$14.90, was paid by Carrier. Claimant asserted that the purchase price was offset by cash expenditures made by Claimant on behalf of Carrier which were not included as expense items. During the hearing Claimant offered to make these cash slips available to Carrier.

Claimant was charged with "unauthorized acquisition of material;" he was not charged with appropriating property for his own use.

Given the nature of the charge, the absence of any testimony that Claimant had no authority to make purchases, and no proof of a wrongful purpose on the part of Claimant, the Board concludes that Carrier's action in dismissing Claimant was unwarranted, arbitrary and capricious. Carrier's responsibility to act prudently and reasonably is greater in matters involving the reputation and integrity of its employees.

The charges against Claimant are to be expunged from his file, and Claimant is to be restored to the employ of Carrier with seniority. In addition, Claimant is entitled to be compensated for any wage loss suffered. In determining wage loss, earnings received from outside sources are to be deducted.

AWARD: The Claim is sustained consistent with the Opinion herein. Order date is 30 days from date of Award.

PUBLIC LAW BOARD NO. 566

/s/ Nicholas H. Zumas

Nicholas H. Zumas, Chairman

/s/ A. J. Cunningham

A. J. Cunningham, Employee
Member

/s/ S. J. Wilson - Dissent

S. J. Wilson, Carrier Member

Signed and dated at Philadelphia, Penna. December 18, 1970

Dissent to Award No. 5
Special Board of Adjustment No. 566

The award of the majority in this case is wholly without any reasonable basis in the record. It is based on assumptions made by the majority which are completely contrary to the facts of record.

The purchasing procedures utilized are characterized as "admittedly 'unorthodox' but, it is contended, acceptable in the Williamsport area". It is obvious that the purchasing procedures were unorthodox but it is equally obvious that they were not acceptable to the company. The purchase of supplies from third parties to be billed on false invoices through the Lundy Lumber Company was not acceptable, and certainly not so when used to acquire items of a personal nature.

It is next stated that "throughout the investigation and hearing" claimant contended that he had been authorized or instructed to make all the purchases except one. This is contrary to the record. At the investigation claimant denied receiving any personal items until, when confronted at the trial with the Company's evidence, he admitted receiving such items but pled "authorization". The claimant's actions were not those of a candid and honest employee who thought he was merely complying with the instructions of his supervisors.

The majority certainly cannot justify the claimant's acquisition of a fence for his personal use. The claimant's concealment of this transaction at the investigation, coupled with his ultimate admission at the trial, is alone sufficient to support dismissal. There is certainly no basis to accept the claimant's vague statements as to cash expenditures for which he chose to reimburse himself in this dishonest manner.

The claimant was charged with unauthorized acquisition of this material. The majority seems to feel that this charge is not broad enough to include misappropriation of property for his own use. Certainly this is mere playing with words. "Unauthorized acquisition" includes the acquisition of personal items for personal use where the cost thereof is charged to the company through false invoices.

The majority seems to give some weight to "the absence of any testimony that claimant had no authority to make purchases". However, the absence of such testimony certainly does not absolve claimant of his responsibilities. On the contrary, it was the fact that he had authority

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and acted under the color of that authority to falsify invoices and acquire material made his action so reprehensible.

The majority refers to "no proof of a wrongful purpose on claimant's part. We fail to see how such a statement can be made in the light of claimant's admitted acquisition of the fence and in the light of the strong implication that arises that other unexplained acquisitions were also made by claimant.

Finally, the majority has even gone beyond the position of the Organization, which made the following statements in their brief:

"But, nevertheless, it must be conceded that there was no show of larceny or misappropriation of such supplies. Except, of course, in Mr. Fuoss' case, the gothic fence."

"Maybe it can be said that he acquired material for personal use in an unauthorized manner."

"It is true that the obtaining of this fence, in this instance, was not by the direct instructions of his superior.****"

"However, we do concede that it was unauthorized and improper to have done it the way he did, without having at least cleared it with his supervisors."

"We think that the charge of dismissal is wholly out of step with the offense committed."

"We insist that dismissal of this employe, a veteran of forty-five (45) years of service with the Carrier, so close to the time of his retirement, is grossly unfair and away out of line with the offense committed." (Emphasis ours)

"We are certain this Public Law Board is well informed on its rights and authority to adjust discipline, if the Board concludes that the discipline assessed was excessive in light of the facts in a Case."

The Organization also relied upon Third Division Award No. 6085 which went to the correction of excessive discipline; Third Division Award 18050 quoting in part "The record indicates some negligence on the part of the Claimant and also that he was not solely responsible for much of the recorded confusion"; and Third Division Award No. 15841 which stated, "Accordingly, the Board finds that under all the circumstances the sanctions imposed were too severe, and must be reduced." Quite clearly, the Organization recognized that Claimant in this case was not without guilt; that he did commit an offense for which discipline was warranted, but considered that dismissal was too severe. How then can the majority justify expunging the charges from Claimant's file, and reward him by paying him wage loss suffered.

The record in this case more than met the established standards under which the carrier must support discipline by substantial evidence. There is no basis for the finding that the Company's action was arbitrary and the award is wholly beyond the Board's jurisdiction and authority.

/s/ S. J. Wilson

S. J. Wilson
CARRIER MEMBER