

PUBLIC LAW BOARD – NO. 6461

Case No. 13

Award No. 13

PARTIES

Brotherhood of Maintenance of Way Employees

to

-and-

DISPUTE:

Grand Trunk Western Railway

STATEMENT OF CLAIM:

Appeal of the discipline of dismissal assessed
Donald R. Ferris, Jr., effective August 1, 2003.

FINDINGS: This dispute arose as a result of the claimant being charged with the following offense:

“allegedly took, without paying for lottery tickets
from a convenience store in Imlay City, MI on or
about 10:15 AM on Friday July 11, 2003.”

Subsequent to a formal investigation held on July 18, 2003, claimant was found guilty of violation of General Rule 1 of U.S. Operating Rules on Conduct Unbecoming an Employee and violation of General Rule D, for which he was disciplined in the form of being dismissed from service, effective August 1, 2003.

At the formal investigation, CN Police Department Special Agent G. A. McWilliams, testified that on the date in question he was informed that the Imlay City Police Department was investigating the larceny of lottery tickets and the possible involvement of a CN employee. Upon his arrival at the Imlay City Police Department he was told that they received a report of a theft of lottery tickets from a Mobile Station in Imlay City, and the culprit was seen leaving in a white CN pickup truck. Mr. McWilliams said that after he and Mr. Cerri watched the theft of the lottery tickets on the stores video tape, they drove to railroad property and waited until a white CN pickup truck pulled up at their location. When they confronted the occupants of the truck, one of whom was the claimant, they asked if they knew anything about the theft of lottery tickets. They said the claimant responded by saying that he had them in his truck, whereupon he pulled a bundle of lottery tickets out from under the seat of the truck.

Messrs. McWilliams and Cerri stated the claimant told them that he found the lottery tickets on the floor of the Mobile Station, and that it was his intention to return to the store later in the day to see if someone had reported them lost. Subsequently the Imlay City Police told the claimant that they had a videotape showing that approximately 98 lottery tickets were being removed from the counter of the store. Faced with this information, the claimant then changed his story and admitted taking the lottery tickets from the counter, however, he stated he thought a customer had left them there.

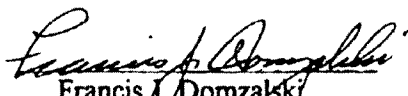
The Carrier points to claimant's admission to taking the lottery tickets, and that he was observed leaving the scene in a Company vehicle. Therefore, they assert the record clearly proves that he is guilty of dishonesty, and the assessed discipline was warranted based on the seriousness of the offense.

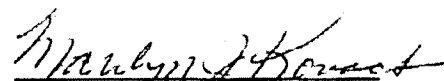
Albeit the Organization acknowledges the claimant exhibited bad judgment, they do however assert that he is remorseful for his reckless behavior, and did return the lottery tickets to the store with his apology. They also contend that the incident had zero impact on the Carrier, thus in light of the circumstances and claimant's tenure, he should be reinstated.

After a thorough review of the record, the Board finds substantial and convincing evidence was adduced by the Carrier to prove the claimant acted in a dishonest manner. While he eventually admitted that he took something that didn't belong to him, we found his explanations to Carrier officers were deceptive, self-serving and specious at best.

Therefore, given the established facts of this case, and in consideration of the serious nature of the proven offense, and noting that he had been previously disciplined on seven prior occasions, we find the Carrier was on valid grounds when it assessed discipline. Thus, we will not intervene in this matter.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


Marilyn J. Kovacs
Carrier Member


Perry K. Geller, Sr.
Organization Member

Dated: 12-27-03