

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 126

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Inspector J. P. Traub for his alleged theft of Carrier property was without just and sufficient cause and excessive punishment (Carrier's File MW-FTW-98-96-LM-580).
2. Track Inspector J. P. Traub shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered commencing December 31, 1998.

FINDINGS:

Claimant J. P. Traub was employed by the Carrier as a track inspector at the time of this claim.

On January 4, 1999, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the theft of Carrier property in that, on December 30, 1998, at approximately 3:30 p.m., the Claimant allegedly removed tires from Carrier Vehicle No. 393512 without proper authorization.

The hearing took place on January 7, 1999. On January 12, 1999, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from the service of the Carrier.

The Organization filed a claim on behalf of the Claimant, arguing that the

Carrier's decision was arbitrary, unjust, and excessive. The Organization argues that the Claimant admitted his involvement in the incident and sincerely regretted his actions by extending his regrets and apologies for the incident. The Organization also argues that the Claimant cooperated fully with the Carrier to the extent of affording the Carrier's officers a written statement on his activities. The Organization maintains that the Claimant never attempted to minimize the seriousness of the charges nor did he attempt to evade the part that he played in the incident. The Organization asserts that the primary purpose of discipline is to salvage an employee, not to permanently injure him as the Carrier has done in this case. The Organization contends that the Carrier overlooked the Claimant's over twenty-two years of service on behalf of the Carrier and failed to afford the Claimant an opportunity to continue to be an asset to the Carrier. The Organization also claims that the Carrier prejudged the Claimant, thereby failing to offer the Claimant a fair and impartial investigation in violation of Rules 22-(A) and (E).

The Carrier denied the claim. The Carrier argues that the Claimant was properly notified and was afforded a fair and impartial investigation in accordance with the parties' agreement. The Carrier contends that the Claimant, while on duty and under pay, was apprehended in the unauthorized removal of tires from a Carrier truck. The Carrier asserts that the Claimant and another employee were caught red-handed in removing tires from a Carrier vehicle to be used for the Claimant's personal use. The Carrier maintains that the Claimant admitted that he knew what he did was wrong. The Carrier acknowledges that the Claimant was remorseful; however, the Carrier argues that that does not excuse the Claimant's lack of respect for the rules which govern Carrier policy.

The Carrier contends that in the Claimant's over twenty-two years of service, he has repeatedly shown disregard for the rules and regulations. The Carrier claims that since the Claimant has repeatedly shown disregard for the work and conduct rules of the Carrier, it had no choice but to impose the ultimate penalty of dismissal.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was taking Carrier tires for his own personal use and he had no permission to do so. The Claimant admitted that he was planning to remove the tires from the Carrier truck and swap them for the more worn tires on his own personal truck. Therefore, the Claimant was clearly guilty of theft of Carrier property and subjected himself to discipline.

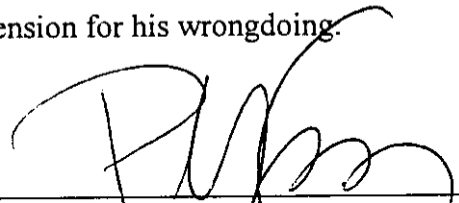
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The record in this case reveals that the Claimant has been employed by the Carrier for over twenty-two years. There is also evidence that the Claimant did not have the intention to steal the Carrier property because he thought that the tires would be auctioned off along with the vehicles. The Claimant stated that he made a terrible mistake and he was very sorry for it. Finally, there was a co-worker involved in this matter and he was reinstated.

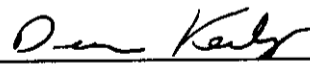
Consequently, this Board finds that the Claimant shall be reinstated but without back pay. The Claimant will be given this last chance to show that he is a good employee. This Board is not convinced that he had a true intent to defraud the Carrier and, therefore, we will give him the benefit of the doubt and reinstate him to employment but without back pay. The time that the Claimant was off work shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. The Claimant is reinstated to service but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension for his wrongdoing.

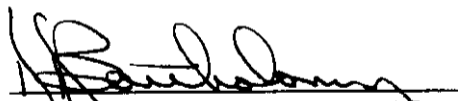


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 5/18/01



ORGANIZATION MEMBER

DATED: 5/18/01