

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Seaboard System Railroad (former L&N Railroad)

STATEMENT
OF
CLAIMS:

Case No. 121: L. R. Carnes be re-instated and paid 8 hours straight time each work day from May 18, 1984, and all overtime incurred by Gang he was assigned to at that time. Also, that Mr. Carnes be restored all rights that he may be entitled to under the October 1, 1973 Agreement.

Case No. 122: A. T. Helton be re-instated and paid 8 hours straight time each work day from May 18, 1984, and all overtime incurred by Gang he was assigned to at that time. Also, that Mr. Helton be restored all rights that he may be entitled to under the October 1, 1973 Agreement.

FINDINGS:

Claimants were dismissed from Carrier's service for "participating in theft from camp cars that occurred on January 21, 1983, while the cars were parked near Baxter, Kentucky."

Carrier's findings are based on testimony of A. F. Brogan, the cook assigned to Band B Gang 202, that he observed claimants enter the side door of the camp car assigned to claimant Carnes, take out a TV, radio and tool box from the car, and place those articles

into a pickup truck that belonged to Carnes. He described the color of the truck as grey with a red stripe down the middle. Brogan's testimony is definite and clear and remained unshaken despite vigorous cross-examination. There is no evidence that it was inspired by animosity, bias or other wrongful motive. The fact that he was sixty at the time and wore prescription glasses does not detract from the force of his testimony.


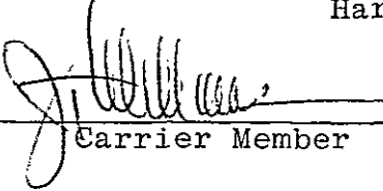
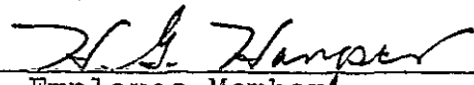
We have considered with care claimant's denials and the points that Brogan's observations were made at 11:30 p.m. over a distance of what he once estimated to be 200 yards and that a car cannot back up to the door of the camp car. Neither those factors nor the other considerations mentioned by petitioner persuade this Board that it should disturb Carrier's finding that Brogan's testimony is credible. We are aware that estimates as to distance can vary appreciably and that Brogan also testified that a street light was near the camp car in question. Claimants were not strangers so far as Brogan was concerned, and, as the Gang's cook, he was familiar with their appearance, walk and manner.

Carrier's findings are supported by substantial credible evidence and we will deny the claim. No prejudicial error on Carrier's part is disclosed by the record.

AWARD:

Claims denied.

Adopted, at Jacksonville, Florida, Dec 19, 1985.


Harold M. Weston, Chairman
Carrier Member
Employee Member