

Award No. <sup>21</sup>  
Case No. 31

Public Law Board No. 2778

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Baltimore and Ohio Railway Company

STATEMENT  
OF  
CLAIM:

Claim of Foreman E. E. Rummer and Trackmen Ronald D. Friend and R. D. Myers for reinstatement and pay lost because of dismissal.

FINDINGS:

Carrier's finding that claimants removed used ties from its property is supported by substantial and credible evidence. The ties were sold mostly to local nurseries at Foreman Rummer's direction. Myers and Friend assisted in loading and delivering the ties.

Rummer testified that he sold the ties over a two-year period for about \$900. He admitted that he knew it was not proper to load, unload and transport the ties during working hours and that he never requested permission to dispose of old ties. He testified further that he paid members of his crew for assisting the loading of ties into the truck and told them that "we are cleaning the right of way" when one employe refused to help load ties. It is clear that he realized that he was doing something wrong.

No basis is perceived for setting aside Carrier's decision to dismiss Foreman Rummer. The record discloses no prejudicial procedural error.

Myers and Friend were trackmen in a force headquartered at Marietta, Ohio. Rummer was foreman of that force. While Myers and Friend received money for ties they sold to a nursery and serious discipline is warranted in their cases, we are not satisfied that this record clearly establishes that they were aware that what they were doing was dishonest and in flagrant violation of Company rules. Their foreman had indicated that it was not improper to dispose of old ties in the area and there is no evidence that they had received contrary information from any other source.

The record is not sufficiently strong to support such extreme discipline as dismissal of the two trackmen.

AWARD:

Claim of Foreman Rummer denied.

Claimants Friend and Myers to be reinstated without back pay. To be effective within 30 days.

Adopted at Baltimore, Md., *February 22*, 1984.

  
Harold M. Weston, Chairman

  
Carrier Member

  
Employee Member