

PUBLIC LAW BOARD NO. 3542

Parties
to the
Dispute

Pennsylvania Federation Brotherhood of
Maintenance of Way Employees

vs.

Consolidated Rail Corporation

Case No. 2

Award No. 2

STATEMENT OF CLAIM

(a) That Leon Davis, Jr., employed by the Carrier as a Trackman at Chicago, Illinois, be restored to all service of the railroad with all privileges intact and the Claimant compensated for all lost wages from November 7, 1981 until so restored.

(b) That Leon Davis, Jr.'s record be cleared of all charges brought against him.

OPINION OF THE BOARD

Claimant L. Davis, Jr., was a Trackman at Carrier's Facility in Chicago, Illinois. In December 1981, he was charged by Carrier with violations of numerous rules resulting from his alleged participation in attempting to remove merchandise consigned to Carrier from Company property. A hearing into the matter was held on January 6, 1982. Claimant appeared but refused to answer questions

-2-

because his Attorney contended that his answers might be used against him in upcoming criminal proceedings involving the same incident. The Hearing Officer, however, held the hearing as scheduled (with the Claimant in attendance, but not participating). At the conclusion of the January 6, 1932, hearing, the proceedings were adjourned until January 19, 1932, in order to give Claimant time to secure witnesses and prepare a defense. The hearing was reconvened as scheduled. Claimant was not in attendance. Carrier proceeded with the hearing and as a result, found Claimant guilty as charged and dismissed him from service. Claimant was ultimately found guilty by Civil Court of felony theft.

Claimant in this case refused to go forward at his hearing at his own peril. Carrier gave him every opportunity to defend himself on two separate occasions: January 6 and 19, 1932. His failure to participate can not be allowed to impede the hearing process.

On the merits of the case, Carrier had eye-witnesses to the fact that Claimant and others were loading Carrier merchandise in a station wagon and transporting it off Company property when they were stopped by Con Rail Police and City Police and placed under arrest. Carrier need not continue such employees in service. It is well understood in the railroad industry that if you are

-3-

caught stealing, you will be fired--and most likely be arrested and charged. Claimant has no one but himself to blame for his dismissal.

AWARD

The claim is denied.

R. E. Dennis 9/20/84
R. E. Dennis, Neutral Member

J. Dodd
J. Dodd, Employee Member

R. O'Neil
R. O'Neil, Carrier Member