

PUBLIC LAW BOARD NO. 3558

PARTIES ) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO )  
DISPUTE ) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Track Foreman Jimmy G. Scott for reinstatement to his former position with pay for all time lost, with seniority and all other rights restored unimpaired account being unjustly dismissed from service." (MW-85-97)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant was dismissed from service as a result of the Carrier having determined him to be guilty to a charge of violation of Rules 801 and 806 of the Rules and Regulations of the Maintenance of Way Department in connection with what the Carrier maintains was the sale of company materials (rails) without authority and keeping the proceeds of such sale (\$350) for personal use.

Although the record as developed at the company hearing contains some conflicting statements, the Board does not find them to be of such a nature so as to hold that Claimant was denied benefit of a fair hearing or to conclude that the Carrier was without sufficient just cause to find Claimant guilty as charged.

In arriving at this decision the Board would note that it is not persuaded by the Claimant's argument that he had met the burden of proving the rail belonged to him, or that the check which he had received from a private individual had been left blank with respect to the payee, particularly in the light of the check for such rail showing it to be payable to the order of the "Southern Pacific Rail Road," albeit Claimant was able to personally cash this check with his own personal endorsement on the back of the check at a local bank. Moreover, the sworn statement of the payer states he had made the check payable to the Carrier before he handed it to the Claimant.

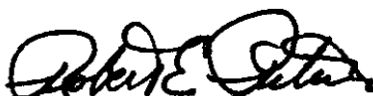
In the Board's opinion, if the rail was in fact the property of

the Claimant and the money for the sale of the rail was indeed his, it would seem that he would have had the check issued as payable to his personal account or, if he subsequently found the check had been improperly issued as payable to the Carrier, that he would have asked for it to be reissued as payable to himself.

The weight of evidence being sufficient to show the conclusion reached by the Carrier was neither arbitrary nor unreasonable, this Board is not authorized to interfere with the Carrier's disciplinary action. Accordingly, the claim for reinstatement to service will be denied.

AWARD:

Claim denied.



Robert E. Peterson, Chairman  
and Neutral Member



C. B. Goyne  
Carrier Member



M. A. Christie  
Organization Member

Branson, MO  
May 19, 1986