

PUBLIC LAW BOARD NUMBER 3566

Award Number: 3

Case Number: 3

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Messrs: S.C. Potter, J.D. Haskew and E. Hubbard, Jr. for alleged violation of Rules 700 and 700(B) was without reasonable cause and unwarranted.

(2) The Claimants shall be reinstated with seniority and all other rights unimpaired, their respective records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered.

FINDINGS:

On November 2, 1982, Special Agent V.G. Lambert was informed by Roadmaster R.D. McCafferty that some men on Tie Gang T-2-11 had broken into a cabin near Wittenberg, Missouri and had taken certain items from the cabin to the gang's bunk car at Neely's Landing. Lambert went to that location and met with the County Sheriff. Claimants returned the stolen items to the Sheriff and also gave him \$75.00 for damages suffered by the owner of the cabin. In return for these actions, the owner of the cabin agreed not to pass criminal charges against Claimants. Claimants were removed from service on November 5, 1982, by Roadmaster S. Gunn.

A hearing was held in order to investigate the incidents described above. On the basis of the evidence adduced during the investigation, Carrier determined that Claimants had violated Carrier's General Rules 700 and 700(B) and that they should be dismissed. The Organization filed claims protesting Carrier's actions and requesting that Claimants be returned to service with pay for time lost and with all rights unimpaired. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimants were dismissed for just and reasonable cause; and if not, what should the remedy be.

Both before and during the investigation, Claimants admitted that they had taken items from the cabin as charged. General Rule 700 reads in part as follows:

Employees will not be retained in service who are ... dishonest ... or do not conduct themselves in such a manner that the railroad will not be subjected to criticism or loss of good will.

Rule 700(B) reads as follows:


Theft or pilferage shall be considered sufficient cause for dismissal from railroad service.


In view of the clear and strong wording of the above-quoted Rules, Claimants' actions would ordinarily constitute just and reasonable cause for dismissal. In the instant case, however, Claimants have received disparate

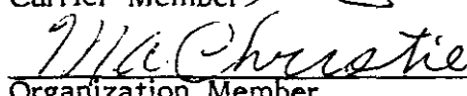
treatment from that of their fellow members of Tie Gang T-2-11. There is ample evidence that other members of the Tie Gang had broken into and entered the cabin. While these other men may not have removed property from the premises as did Claimants, the unauthorized entry into a private residence by employees of the railroad certainly subjected Carrier to "criticism or loss of good will." At the hearing, Roadmaster Gunn testified that once restitution had been made, he "thought everything was over until the Special Agent said to get their [Claimants] resignations." Earlier in the hearing Gunn testified that "I do know these people [Claimants] are basically the fall guys because they are being honest and there had to be at least 21 people by or in the house." For reasons known only to Carrier, of those "21 people" only Claimants were selected for discipline. Such action does not represent fair treatment on Carrier's part, and can only be viewed by Carrier's employees as an arbitrary exercise of managerial discretion. Claimants' dismissals cannot, therefore, be allowed to stand. The offenses committed by Claimants were extremely serious, however; thus while Claimants shall be returned to service, they shall receive no compensation for any lost pay.

AWARD:

Carrier shall return Claimants to service in their former positions immediately, but without compensation for any time lost.

  
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Neutral Member

  
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Carrier Member

  
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Organization Member

Date:

February 1, 1985