

PUBLIC LAW BOARD NO. 3765.

Parties  
to the  
Dispute

:  
:  
: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES :  
:  
: vs. :  
:  
: GRAND TRUNK WESTERN RAILROAD COMPANY :  
:  
:

Case No. 35

STATEMENT OF CLAIM

The dismissal of Machine Operator D. R. Hayes for alleged unauthorized sale of railroad ties and personally receiving payment for the sale of those ties on June 1, 1988 was arbitrary, capricious and on the basis of unproven charges.

Claimant Hayes shall be reinstated in Carrier's service with seniority, vacation credits, railroad retirement credits and all other benefits restored and shall be paid for all time lost including overtime he would have worked.

OPINION OF THE BOARD

Claimant, D. R. Hayes, was employed as a Machine Operator with a tie gang working in the area of Imlay City, Michigan. On June 1, 1988, Carrier's Patrolman Tolliner was notified by local police that

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a truck carrying numerous railroad ties had been sighted. Carrier investigated and found a Hoeksema & Jager truck containing 68 ties marked GT and also marked for removal. The truck driver indicated that he bought the ties for one dollar each from a slender, dark haired, bearded man who loaded the ties with a Grand Trunk machine. Claimant fit the description given by the driver. Carrier thereupon issued Claimant the following letter:

You are hereby notified to attend a formal investigation to be held in the conference room, Grand Trunk Administration Building, 700 Pershing St., Pontiac, MI, 48056 at 0900 hours on Thursday, June 9, 1988 to determine your responsibility if any, for:

1. Unauthorized sale of railroad ties to Mr. Warren Hoeksema at Imlay City, MI on June 1, 1988.
2. Personally receiving payment for the sale of said Grand Trunk railroad ties.

These are in violation of Grand Trunk General Rules for employees not otherwise subject to the Rules for conducting transportation effective July 1, 1976, as follows:

- Rule 11(c) The unauthorized possession of, removal of, disposal of, and material from company property or property served by the company is prohibited.
- Rule 10 Employees are expected to protect the company's property and the property of its customers. If an employee knows that such property is endangered in any way, he must take reasonable steps to protect the property and to notify superiors of the danger.

A hearing into the matter was held on June 9, 1988, as scheduled. As a result of that hearing, Claimant was found guilty as charged and dismissed from Carrier's service.

This Board has reviewed the record and has concluded that Claimant was afforded all procedural and substantive rights guaranteed by Agreement. The Board is also persuaded by the record that Claimant was responsible for selling the ties in question to Hoeksema & Jager and loading them on one of their trucks. While there is no eye-witness to the incident, there is sufficient probative, circumstantial evidence in the record to support Claimant's guilt. This is further buttressed by Claimant's guilty plea to criminal charges stemming from the same incident.

Based on the record before it, this Board has no choice but to deny this claim.

AWARD

The claim is denied.

R. E. Dennis  
R. E. Dennis, Neutral Member

Jo. A. DeRoche  
Jo. A. DeRoche, Carrier Member

W. E. LaRue  
W. E. LaRue, Employee Member

3-8-90  
Date of Adoption