

PUBLIC LAW BOARD NO. 3765

Parties
to the
Dispute

CONSOLIDATED RAIL SYSTEM FEDERATION
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

GRAND TRUNK WESTERN RAILROAD COMPANY

Award No. 5
Case No. 10

STATEMENT OF CLAIM

- (a) The dismissal of Machine Operator Glenn J. Martinek and Trackman Ernie Pinks was without just and sufficient cause, without consideration for the seniority or honesty of these Claimants.
- (b) Claimants Martinek and Pinks shall be restored to service with all benefits and privileges allowed them prior to their dismissal, including but not limited to vacation rights and seniority.

OPINION OF THE BOARD

Claimants Martinek and Pinks were employed by Carrier in the Track Department at Valparaiso, Indiana, Martinek as a Machine Operator and Pinks as a Trackman. At the time of the incident that is the subject of this case, Martinek had about 11 years of service and Pinks 27 years of service. On July 26, 1982, Claimants were charged as follows:

Mr. Ernie Pinks, Trackman

- 1) Allegedly violating Rules 11(c), 13 and 14, of the GT General Rules for Employees Not Otherwise Subject To The Rules for Conducting Transportation, Effective July 1, 1976 by the unauthorized removal of company material from the company property and the sale of same to the A. J. Berrier Company, 551 Factory Street, Valparaiso, Indiana, on April 30, 1982; and
- 2) Allegedly participating in the unauthorized use of company vehicle No. 315-C after working hours on April 30, 1982.

Mr. Glenn J. Martinek, Machine Operator

- 1) Allegedly violating GT Special Instructions, GT 1.4 of the Employees' Operating Timetable 3, Supplement 1, by the unauthorized removal of company material from the company property and the sale of same to the A. J. Berrier Company, 551 Factory Street, Valparaiso, Indiana, on April 30, May 3, 5 and July 6-9, 1982; and
- 2) Alleged unauthorized use of company vehicle No. 315-C after working hours on April 30, May 3, 5 and July 6-9, 1982.

A hearing into the matter was held on July 28, 1982. As a result of that hearing, both Claimants were found guilty as charged and dismissed from Carrier's service. This Board has carefully reviewed the transcript of the hearing as well as all other documents made a part of the record. It is this Board's conclusion, based on that review, that in the case of Claimant Pinks, Carrier has acted in an arbitrary manner in treating him the same way as Claimant Martinek.

The record reveals that Claimant Martinek sold company material

to the local scrap dealer on a number of occasions. It also shows that Claimant Pinks was involved only one time and, in this instance, was not the main operative, but was only "along for the ride." In light of Claimant Pinks' secondary role in the incident, his long years of service (27 years), and his otherwise clean record, it is this Board's opinion that Carrier can make its point with Pinks by a long suspension. The Board is in full agreement that Martinek's removal was appropriate.

AWARD

The claim on behalf of Martinek is denied. Claimant Pinks shall be returned to duty with seniority intact but without pay for lost time or benefits. Carrier shall implement this award within 30 days of its adoption by the Board.

R. E. Dennis

R. E. Dennis, Neutral Member

W. E. Larue

W. E. Larue, Employee Member

R. J. O'Brien

R. J. O'Brien, Carrier Member

May 27, 1987

Date of Adoption