

Award No. 23
Case No. 22

Public Law Board No. 3794

Parties to Dispute:

Brotherhood of Maintenance
of Way Employees

and

Seaboard System Railroad

Statement of Claim:

1. The 60-day suspension imposed on Machine Operator D. Ingram for allegedly selling cross ties was without just and sufficient cause.

2. Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

Findings:

Claimant was administered a 60-day suspension for disposing of ten relay cross ties belonging to Carrier. The record, including Claimant's own testimony, establishes that he wrongfully in violation of applicable Company rules, used a Company vehicle to deliver the ties to a third person on private property. That third person reported, but Claimant did not admit, that he paid Claimant \$50.00 for the ties. The ten

ties were marked for reuse and taken from Company property where they were being held for use in the track between Milledgeville and Macon.

Petitioner nevertheless urges that the claim must be sustained since Carrier failed to observe the requirements of Rule 39, Section 7. That provision reads as follows:

"Whenever charges are preferred against an employee, they will be filed within ten days of the date violation becomes known to management. Of course, this would not preclude the possibility of the parties reaching agreement to extend the ten-day limit."

The charges against Claimant were filed on February 1, 1984. While Roadmaster Taylor first suspected on about January 1, 1984 some irregularity when he found the ten cross ties off Company property and near a highway, he did not know who was responsible. The matter was then investigated and a report of the investigators' findings did not reach the Superintendent's office until January 24, 1984.

The third party who had received the ties admitted on January 16 that Claimant had brought the ties to him and was paid \$50.00 for them. Claimant and two other involved employees (whose Cases are considered in Case No. 23) had denied that they were implicated in any way when first interviewed and it was not until January 18 when Claimant was shown

the third party's statement that he admitted using the Company truck to deliver cross ties to the third party and that Hunt and Chester, the Case No. 23 Claimants, were present at the time.

The investigator then, on January 19, again questioned Hunt and Chester in order to round out the investigation and both then admitted that they were present when the cross ties were unloaded by Claimant Ingram on the third person's private property.

The agent filed his report on January 20 with the General Inspector who notified the Superintendent of the findings on January 24.

In view of the employees' initial lack of cooperation and delays that were not caused by Carrier, it is our conclusion that, realistically speaking, the charges were filed within the ten-day period prescribed by Rule 39, Section 7. Carrier did not have knowledge of the violation until the responsible officials had had a reasonable opportunity to evaluate the special agent's report.

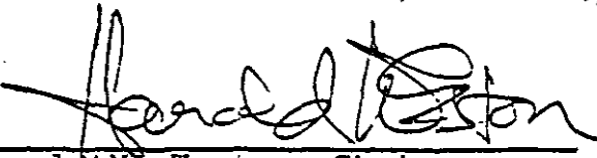
No valid ground exists in these circumstances for setting aside Claimants suspension. It is not excessive

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4.

Award: Claim denied.

Adopted at Jacksonville, Florida, *November 6* 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member