

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
INDIANA HARBOR BELT RAILROAD COMPANY

Case No. 13

Dispute: Claim of the Brotherhood:

That Lead Mechanic P.J. Probus be reinstated to service from his dismissal of June 9, 1988, and that he be compensated for all monetary losses that he has sustained.

Findings:

The Claimant was employed as a lead mechanic by Carrier. On April 26, 1988, Claimant was instructed to attend an investigation:

to determine the facts and your responsibility, if any, in connection with you being observed by IHB Police on April 22, 1988, at approximately 4:15 p.m., removing two new Eagle Safety gas cans, two new Pallux toggle switches, one Tilko auto-type rotor cap, and one package of paper towels from IHB Company vehicle, a 1987 Chevrolet van, Indiana license # 307722, and placing same in your garage located at 1658 174th Street, Hammond, Indiana. Also found in your garage were two used 5-gallon cans which you stated were also IHB property.

The investigation was held on May 24, 1988, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of improperly removing various items of Carrier property and putting them into his garage. Although the Claimant argues that he was putting them in his garage for safe keeping, the record reveals that he did not have permission to remove those items from the Carrier truck or, in some cases, from the Carrier property.

Once this Board has determined that there is sufficient evidence

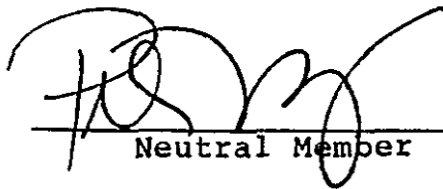
in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

The record reveals that the Claimant had approximately ten and one-half years of unblemished service with the Carrier prior to this incident. Although this Board has found the Claimant guilty of improper removal of several items of Carrier property, this Board is not convinced that the Claimant is a thief. This Board views this case as a rule violation case as opposed to a theft case, and therefore we find that the termination of the Claimant's employment for this offense was excessive.

This Board hereby orders that the Claimant shall be reinstated to service but without back pay. There was not just cause for the Carrier to terminate the Claimant's employment.

AWARD

Claim sustained in part. Claimant is to be returned to service but without back pay.


Neutral Member


Carrier Member


Organization Member

Date: 7.27.90