

PUBLIC LAW BOARD NO. 6564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION, INC.

Case No. 31

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

1. The dismissal of Welder Helper R. T. Simmons, Jr., for his alleged conduct unbecoming an employee for selling cross ties without permission was without just and sufficient cause and excessive and undue punishment (System File D21720903/12(03-0640)).
2. Welder Helper R. T. Simmons, Jr. shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Background:

Claimant R. T. Simmons, Jr. was hired as a trackman on the Nashville Terminal District of the former Louisville and Nashville Railroad Company on February 3, 1979.¹ Claimant was upgraded to welder helper on the same District on July 22, 1985, and held that position in the Nashville Welding Plant in 2003. In May 2003², Carrier Police Special Agent John McCullough investigated a report that there was a pile of new Carrier cross-ties at the Southern Lawn and Equipment Company in Nashville. Special Agent McCullough went to Southern, and saw the cross-ties there, stamped "CSX" on the ends. Southern personnel told Special Agent McCullough that Claimant had delivered thirty-

¹ The Carrier was established as a result of the merger of the Seaboard Coast Line (SCL), Louisville and Nashville (L&N), Baltimore and Ohio (B&O), and Chesapeake and Ohio (C&O) railroads.

² All dates hereafter are 2003 unless otherwise indicated.

two cross-ties to Southern, for which he had been paid \$224.00. Southern personnel also told Special Agent McCullough that Claimant had sold ties to Southern on several occasions.

On June 4, Special Agent McCullough and Superintendent Rail Welding Plant C. E. Oaks spoke with Claimant at his residence. Claimant admitted to Oaks and Special Agent McCullough that he had taken ties from the Carrier and sold them to Southern. On June 10, the Carrier issued a letter instructing Claimant to report for an investigation, charging:

Based on information received, and as was admitted by you, the theft of and sale of new CSX crossties occurred in and around Nashville, Tennessee.

In connection with the above, you are charged with conduct unbecoming an employee of CSX Transportation, theft of company material and sale of company material without authorization, as well as possible violations of CXC Operating Rules 501 and 501-A relating to the theft and sale of the material.

Operating Rule 501 provides in pertinent part:

All employees must behave in a civil and courteous manner when dealing with customers, fellow employees and the public. Employees must not:

...

4. Be disloyal, dishonest, insubordinate, immoral, quarrelsome, vicious, careless or incompetent....

Operating Rule 501-A provides:

Criminal conduct which may damage the Company's reputation is prohibited. Criminal conduct which indicates a potential danger to the Company, its employees, its customer or the public is prohibited.

After two postponements, a hearing was held on July 7. At hearing, Claimant again admitted that he had taken new Carrier ties and sold them to Southern. Claimant testified:

[M]e and my wife have split up and we're divorced.... I got a six-year old son, and ... [h]e stayed with his momma. And on that date she had called me and said if she didn't get some money she was going to take my son and leave and I wouldn't see him no more, so the only residue[sic] I had or knew what I could do was to come up with some money pretty quick cause I knew this company would buy these ties cause they bought old ties from me before -- that I would get some ties and would get her money that she wanted so she wouldn't leave with Ryan....

The Carrier dismissed Claimant by letter dated July 15. By letter dated August 8, the Organization appealed the dismissal. The matter was discussed in conference on October 15, and by letter dated October 22, the Carrier again denied the appeal. The matter not being resolved, the parties have presented it to this Board for final decision.

Carrier's Position:

The Carrier contends that it produced substantial evidence establishing the charges against Claimant at hearing, including Claimant's own admissions of guilt. The Carrier further contends that dismissal was warranted by Claimant's admitted misconduct. Theft of company property is a serious offense, and arbitral precedent has established that dismissal is appropriate for employees who engage in such theft, the Carrier submits.

According to the Carrier, the Organization does not refute the charges against Claimant, but rather makes a plea for leniency based solely on Claimant's tenure with the Carrier. The Carrier submits that leniency decisions are a matter of managerial prerogative and, in the instant case, the Carrier sees no basis for granting leniency. Employee misconduct that breaks the trust necessary in an employer-employee relationship, the Carrier argues, is not mitigated by an employee's length of tenure. Therefore, the Carrier submits, the Organization's claim should be denied.

Organization's Position:

The Organization contends that Claimant's dismissal was unduly harsh and excessive in light of Claimant's twenty-five years of unblemished service to the Carrier. Claimant explained at hearing that he had been experiencing personal problems and faced the potential loss of his relationship with his six-year-old son. According to the Organization, Claimant admitted his wrongdoing, and is willing to make restitution for the ties in question. Therefore, the Organization submits, the penalty assessed Claimant should be reduced.

Findings:

It is undisputed that Claimant sold new cross-ties belonging to the Carrier to Southern Lawn and Equipment Company. Claimant admitted his guilt at hearing. Theft of company property is a very serious breach of the employer's trust. No length of service, even if free of prior discipline, can lessen the seriousness of the offense when an employee steals from his employer. Claimant's twenty-five years of previously unblemished service with the Carrier do not make it less egregious that he stole property from the Carrier.

Nor do the reasons for his misconduct offered by Claimant at hearing mitigate the seriousness of his offense. Certainly, the plight Claimant described regarding jeopardy to his continued relationship with his six-year-old son is evocative of sympathy. The criminal act of theft, however, was obviously not an appropriate or permissible response to Claimant's need to obtain money. The Board finds that Claimant's misconduct warranted dismissal, and that none of the circumstances in the instant case requires mitigation of that penalty.

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This Board has no authority to disturb discipline that has been properly assessed.

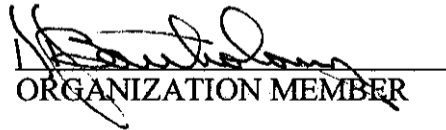
Whether to grant leniency is purely the Carrier's choice. In the instant case, the Carrier has elected not to grant leniency. The Organization's claim must be denied.

Award:

The claim is denied.


JOAN PARKER, Neutral Member


CARRIER MEMBER


ORGANIZATION MEMBER

DATED: 04-18-05

DATED: 4-18-05