

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 385

Docket No. 385

File 871172G

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Union Pacific Railroad Company  
(Former Missouri Pacific)

Statement

of Claim: (1) Carrier violated the Agreement, especially Rule 12, when Trackman D. J. Hearn was dismissed from the service.

(2) Claim in behalf of Trackman Hearn for eight hours work day, including holidays and overtime that would have accrued to him had he not been dismissed. Claim to continue until he is reinstated to service with seniority, vacation and all rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

Claimant was advised on November 9, 1987 that as a result of a formal investigation, held on October 13, 1987, on the charge that while working as a Trackman Driver on Gang 9165 he had, on September 22, 1987, sold railroad property (200 ties for personal gain without proper authority), that the evidence sustained the charge and he was dismissed from service as discipline therefor.

Claimant had been authorized by K. W. Lynch, Tie Gang Supervisor, to remove 200 ties from the property for his father. Claimant testified that his father had advised him he could not remove them because his truck had broken down. Claimant then sold the ties to a Mr. Dove for \$200.

The Union argues that the ties were not railroad property but were the property of the contractor who had granted the permission for the 200 ties.

T. J. Worthington, Roadmaster, testified that the policy involving the discarding or removal of second hand ties is that the railroad has control of them, no one has the authority to sell or discard them without written authority from above.

The Turnkey Construction Company had a contract with the railroad for the ties pulled out by Tie Gang 9165 on the Laredo subdivision. In fact it had a contract on the whole Gulf Division. It bought all the ties behind the Tie Gang.

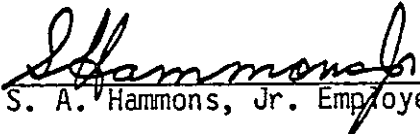
Said contract states that the Turnkey Construction Company pays a certain amount per tie. There is a percentage, factor about 10%, of the total amount of ties that are to be retained by the railroad. Once the ties are picked up the contractor then has to pay for them.

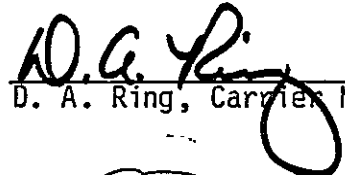
K. E. Lynch, Tie Gang Supervisor, testified that he had asked the Contractor for 200 ties from Mr. Hearn's father to pick up, that Hearn had permission to pick them up for his father, the Contractor had given other employees ties for personal use, that it was his understanding that once the ties come out of the ground they belong to the contractor and, thus, are not railroad property.


After reviewing the contract provided to the Chairman by Carrier the Board finds that Roadmaster Worthington's understanding was correct. In any event Claimant had no right when his father could not accept the ties to therefore sell them to a third party.

Claimant was returned to service without pay on October 9, 1988. The discipline of suspension is deemed reasonable. This claim will be denied.

Award: Claim denied.

  
S. A. Hammons, Jr. Employee Member

  
D. A. Ring, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued April 30, 1990.