

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 413

Docket No. 413

File 890303

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 B&B Carpenter M. W. Cottingham was dismissed from the service March 2, 1989.

(2) Claim in behalf of Mr. Cottingham for all wage loss suffered and restoration of seniority, vacation and all other rights unimpaired.

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

This is a similar charge to that found in Award No. 385 the findings of which by reference are included herein.

Claimant Trackman, following a formal investigation, was advised under date of March 2, 1989 that his record had been assessed with dismissal in connection with his unauthorized sale of company material on or about 2-1-89 while working as Trackman on Gang 1055, on the Little Rock subdivision, in violation of General Rule B and Rule 607, 609, and 613 of the Safety Radio and General Rules.

The transcript (T-37) reflects the testimony of James C. Gillam, the Agent for used railroad cross ties for the Union Pacific Railroad for Units 12 through 21. He testified:

"We handle all the used ties for the States of Arkansas, Louisiana and Texas. Any gangs that happens in that area, my brother and I have a contract for removal of anything that is wood, if it is a switch tie, a crossing plank, ties underneath that is a used tie, or a tie butt. It is the railroad's property and after we get it off the right-of-way it is our to sell and to market...."

Gillam further testified that he did not authorize Mr. M. W. Cottingham to remove or sell company material. He testified that it was "railroad property until we get it off the right of way, is the way I understand it (T-38)." Sullivan also testified (T-39):

"I called the police and had them watching, and they waited until the contractor loaded the ties. They were loaded by the backhoe contractor. I never did see an employee of the railroad around. We figured at the time it was just the contractor selling them.

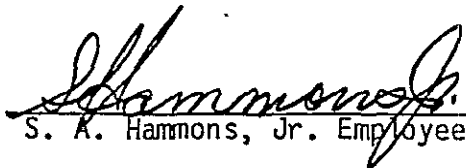
Question: In fact these ties were not company material, they belonged to Gillam Contractors is that correct?

Answer: At one point. There is a breaking point there Mr. Barker, I don't know where it is at, but they belong to the railroad and after we have removed them from the right of way, they are ours. We did not remove them from the right-of-way, the contractor removed them from the right-of-way, or loaded them on somebody else's stuff. It was not us. We never touched them. The police watched them load them with a backhoe. They were not employees involved loading them or anything. Was an operator for Garrett Contractor that they saw load the things, and I imagine one time he is on the right of way but if you take and dump them, you are dumping them on somebody else's stuff. But we never touched the material. We never had anything to do with it. He also testified T-41 they never became my property because I never received them."

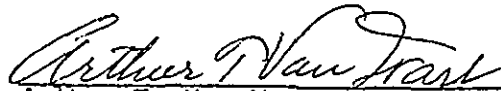
The Claimant admitted that he had a conversation with the purchaser of the ties, that he made contact with the backhoe operator, that he made arrangements to have the cross ties loaded on the back of the truck owned by Mr. Herman Perry, that Mr. Perry wanted a receipt and that he signed a blank piece of paper therefor.

The evidence does show that the Claimant was the man making the sale of the ties which belong to Mr. Gillam. Gillam testified that according to the contract he had with the Union Pacific the ties do not belong to him until he picks them up and removes them from the company property. Hence, since he never picked them up they remained in the possession of Union Pacific. Gillam and the police were watching the property because ties amounting to some \$4,000 had been removed from the property without authorization. Hence, when Mr. Perry left with the truck load of ties he was apprehended by the police. Whether the ties were on Company property or on private property is not pertinent to the resolution of this case. What is pertinent is that Gillam never picked the ties up and the ties were in the possession of the Carrier. 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.