

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 178

Case No. 265

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis Southwestern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. Carrier violated the effective Agreement when roadway machine mechanic, W. E. Brinsfield, was unjustly dismissed on February 5, 1982.
2. Claimant Brinsfield shall now be reinstated to his former position with the St. Louis Southwestern Railway Company with pay for all time lost, his seniority, vacation and all other rights due him, and his record cleared of all charges."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

By letter dated February 12, 1982, Claimant herein was dismissed effective February 5, 1982, for accepting merchandise for personal use when such merchandise was purchased with Company credit. Claimant, having been employed by Carrier for more than 13 years, had had an unblemished record prior to this incident. Following a hearing, which had been requested by Claimant, Carrier reiterated its decision to dismiss him.

The investigation reveals, without question, that on January 15, 1982, Claimant herein, together with track apprentice Forrest, went to the Farmers Supply Association in Pine Bluff, Arkansas, and Forrest purchased two pairs of cowboy boots on a Carrier shipping release form with was written for 200 fifty-pound bags of rock salt. The evidence indicates that Brinsfield was not present when Forrest wrote out the shipping release form for the salt and accepted the boots, although he was present and selected the boots. The only conflict in the evidence

was that Brinsfield stated that he paid Forrest \$25 for the boots and Forrest indicated that he received no money from Brinsfield. Further, Brinsfield's testimony was that he thought the boots could be secured at the discount rate (they were expensive cowboy boots) due to the fact that Forrest had a relationship with an employee working for the Farmers Supply Association. Forrest, on the other hand, contended that Brinsfield was aware of the fact that the boots were being secured by use of a Carrier shipping release form. Carrier's hearing officer resolved the credibility question in favor of the story as related by Mr. Forrest. It is also noteworthy that one pair of boots was for each individual.

Carrier contends that the evidence clearly supports its conclusion that Claimant was guilty of accepting merchandise obtained by falsifying a release form. Examination of the evidence indicates without doubt, according to Carrier, Claimant was aware of the fact that the merchandise was being purchased for Company credit and that this was improper. Claimant's act of dishonesty was a direct violation of Carrier's Rule 801 which indicated in part that employees would not be retained in its service who are dishonest. Further, according to Carrier, there are numerous precedents in this industry with respect to discipline following theft or other forms of dishonesty of a similar type. Carrier concludes that since Claimant was given a fair and impartial hearing and was found guilty of the charges, he was properly dismissed and the discipline should be sustained.

Petitioner takes the position that the Claimant herein was unaware of the fact that the boots were to be charged to Carrier and decided to accept the bargain offered to him by his fellow employee, Mr. Forrest. In support of this position, the organization cites the testimony of Carrier's special agent at the investigative hearing in which the special agent testified that Claimant stated to him, during his investigation of the incident, that he was not aware that a Carrier release form was being used to cover the purchase of the boots. This was substantiated clearly by the testimony of the Claimant, himself, according to the organization. The organization concludes that Carrier has failed to prove that the Claimant was guilty of the charges and, hence, the claim should be sustained, particularly in view of the thirteen years of service with a clean record.

The Board has carefully evaluated the testimony adduced in this matter and has concluded that the record establishes without doubt that Carrier was correct in

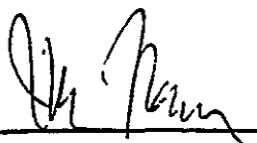
its conclusion that Claimant was at least an accomplice in an improper and dishonest act by Mr. Forrest. It is apparent, however, that the act of dishonesty was not perpetrated by the Claimant, himself, but rather by his associate, Mr. Forrest. This does not absolve the Claimant from responsibility in the matter, however. Even though he did not himself sign the release form and, thus, improperly secure the merchandise, he accepted the merchandise from Mr. Forrest after it was secured from the supply company, with or without the payment of \$25. Under the circumstances and in view of the fact that this is the first incident of dishonesty or other similar type of infraction by the Claimant, it is the Board's judgment that the discipline accorded him was too severe. Common sense indicates that he should have been aware of the fact that \$25 for a pair of cowboy boots was an unreasonably low price, even if that were the price that he paid. Thus, his culpability, at least in part, is clear and unquestioned. For the reasons indicated, however, the discipline accorded him must be modified. He will be returned to his former position with all rights unimpaired but not compensated for time out of work. That period of time would be considered to have been a disciplinary suspension.

AWARD

Claim sustained in part; Claimant will be reinstated to his former position with all right unimpaired but without compensation for time out of work. The period out of work will be considered to have been a disciplinary suspension.

ORDER

Carrier will comply with the award herein within 30 days from the date thereof.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



C. B. Goyne, Employer Member

Houston, Texas
September , 1983