

SPECIAL BOARD OF ADJUSTMENT NO. 541

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
Erie Lackawanna Railway Company

STATEMENT OF CLAIM:

1. Carrier unjustly and improperly dismissed from its service, Section Foreman Murl Hazen and Trackman John Karhnak, as of May 25, 1973, for their alleged violation of Rule 0-2 of Rules of the Operating Department effective October 25, 1964.
2. Carrier shall now reimburse these Claimants all days and hours involved at straight time or time and one-half, whichever it may be, from May 1, 1973, until they have been recalled to service, due to their being unjustly dealt with.

FINDINGS:

Claimants, Section Foreman Hazen and Trackman Karhnak with respectively 46 and 35 years of service, were dismissed for violating Operating Rule 0-2 which reads as follows:

"Employees who are dishonest, immoral, vicious, insubordinate, quarrelsome, uncivil in deportment, or who are careless of the safety of themselves or of others will not be retained in the service."

There is not a scintilla of evidence that claimants were "immoral, vicious, insubordinate, quarrelsome" or "uncivil" and we agree with Petitioner that Carrier's failure to specify which portion of so broad a provision that ranges in scope from carelessness to moral turpitude has been violated may be unfair to any employee found guilty of breaching Rule 0-2.

No prejudicial error has been committed in this case, however, since Claimants have admitted that they permitted outsiders to appropriate used railroad ties that belonged to Carrier and received money for doing so. The fact that Karhnak may have turned the money over to Hazen does not free him from responsibility for permitting unauthorized persons to remove the ties from the property. Supervisor Aldrich's testimony and statements of two outsiders involved, Gilg and Lockwood, support Carrier's findings in the matter.

No justification is perceived for setting aside Carrier's decision that substantial discipline is warranted since employees must realize that they are not free to dispose of company property without permission. On the other hand, we are not persuaded that the record is sufficiently clear to provide a sound basis for dismissal of employees with long service or a finding that they are dishonest.

The importance of used ties as property had been depreciated on a number of instances before the incidents in question took place. Supervisor Aldrich, Division Engineer Hopkins and Carrier Police Lieutenant Ruddy had all on occasion instructed Mr. Hazen to give old ties to certain outsiders they knew. In the light of that background, it would be unreasonable to conclude on the basis of the evidence before us that claimants actually intended to be dishonest. The serious error they made was authorizing, without permission from Mr. Aldrich or other supervisors, outsiders to appropriate property that belongs to Carrier. The decision as to what property can be disposed of and the price and time of each such transaction is for management and not employees to make.

We will direct that claimants be offered immediate reinstatement to the positions they occupied April 30, 1973, with seniority rights unimpaired but with no back pay in the case of Mr. Hazen. Although we are satisfied that Carrier could validly find, on the basis of this record, that Mr. Karhnak was also responsible and that Mr. Hazen's supervisory status was not sufficiently high or of such a nature as to free Mr. Karhnak completely of responsibility, it is our conclusion that the latter was less at fault than was Mr. Hazen and that the period of his suspension should be terminated as of February 1, 1974. He will accordingly receive backpay for the period beginning February 1, 1974 and ending on the date Carrier offered to reinstate him.

AWARD: Claimants reinstated with seniority rights unimpaired with no backpay for Mr. Hazen and backpay for Mr. Karhnak as limited above by Findings.

Adopted at Cleveland, Ohio, October 16, 1974.

/s/ H. M. Weston

H. M. Weston, Chairman

/s/ R. A. Carroll

R. A. Carroll, Carrier Member

/s/ A. J. Cunningham

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A. J. Cunningham, Employee Member