

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31052  
Docket No. MW-31693  
95-3-93-3-724

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

- "(1) The dismissal of Section Foreman D. G. Crayon for alleged removal, or assisting in removal, of cross-ties from Leesville Yard without proper authority on March 26, 1992, in alleged violation of Rules K, N and HH, was unjust, unwarranted, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013.31-456).
- (2) The Claimant shall be reinstated to service with seniority, benefits and all rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered beginning April 28, 1992, and continuing until he is returned to service."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute involves the removal of crossties from Carrier property without proper authority.

A timely Investigation was held and Claimant was dismissed from service on June 4, 1992.

At the Investigation, a Leesville Police Lieutenant testified that after receiving an anonymous tip of someone removing cross ties from railroad property, the police went to the Rail Yards to investigate. Upon arrival, the Lieutenant testified to meeting Claimant at 9:55 P.M. who advised him that everything was all right; that they were just getting some of the cross ties "\*\*\*\* off of the old number nine \*\*\*". The police asked if Claimant had a permit and the response was negative. After contacting Claimant's Supervisor, the police believed the matter was to be resolved internally and left the property.

When the Investigation was held on May 14, 1992, ten weeks after the tie removing incident, Claimant's position was that his step-son had expressed interest in securing old cross ties and that he had advised the necessity of his step-son securing permission to do so. On the date of the incident, after attempting to contact his step-son, Claimant discovered he was down at the yards securing crossties and that he did not have a permit. Claimant contends he had just arrived at the scene with the intent to chase his step-son away since he did not have a permit when the Leesville Police arrived.

Claimant's story would have been plausible if it concurred with that of the police Lieutenant's testimony, but it does not. Furthermore, Claimant made no effort to have the 80 to 100 ties already loaded on the trailer by his step-son to be unloaded. According to Claimant, he simply went home.

Suffice to say, Carrier has sustained the burden of proof necessary to substantiate the charges it had filed against the Claimant. Even a spotless, squeaky clean record cannot be considered as a reason to lessen the discipline assessed because of theft. Theft is theft regardless of who commits it and it is a serious matter warranting the ultimate discipline.

**AWARD**

Claim denied.

Form 1  
Page 3

Award No. 31052  
Docket No. MW-31693  
95-3-93-3-724

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.