

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32004
Docket No. SG-32401
97-3-95-3-263

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of T. E. Campbell for reinstatement to service with seniority unimpaired and with payment for all lost time and benefits and entry of discipline removed from his record, account Carrier violated the current Signalmen's Agreement, particularly Rule 6, when it failed to provide the Claimant with a fair and impartial investigation and imposed the harsh and excessive discipline of dismissal without meeting its burden of proving its charges against the Claimant. Carrier's File No. SG-784-D. General Chairman's File No. RM-2586-2-594. BRS File Case No. 9520-CR.”

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 were given due notice of hearing thereon.

On August 11, 1993, Claimant was notified to attend a trial on August 23, 1993, in connection with his unauthorized possession of Carrier-owned equipment, his unauthorized disposal of Carrier-owned property, and his unauthorized presence on Carrier property at East Conway Tower. Following two postponements, the trial was held on October 21, 1993, and concluded on March 1, 1994. Claimant did not appear and the trial proceeded in absentia. On March 15, 1994, Claimant was notified that he had been dismissed from service.

The Organization contends that Carrier failed to prove the charges. The Organization observes that, on the dates in question, Claimant was an employee in inactive status, off on disability leave. The Organization maintains that Carrier failed to prove that inactive employees were not authorized to come onto Carrier property. Furthermore, according to the Organization, Carrier failed to prove that Claimant intended to convert the items belonging to Carrier which were in his possession. In the Organization's view, Claimant had the items in anticipation of his return to active service. Finally, the Organization contends that dismissal was an excessively harsh penalty and that Carrier should have resorted to progressive discipline.

Carrier contends that it proved the charges by substantial evidence. Carrier argues that Claimant had no authority to come onto Carrier property. Carrier further maintains that the evidence established that Claimant was not anticipating an imminent return to active duty and that, even if he had been on active duty he would have no reason to have Carrier property in his home. The Carrier further maintains that the items Claimant had in his possession and the quantities of such items were inconsistent with Claimant's contention that he possessed them in anticipation of a return to active status. Finally, Carrier maintains that dismissal was appropriate in light of the seriousness of the offense.

The Board notes that our review is confined to the record developed on the property. Having reviewed that record carefully, we find that substantial evidence supports the findings made on the property.

At the time of the incidents in question, Claimant was an employee in inactive status on disability. The Block Operator at East Conway Tower testified that on August 8, 1993, he saw Claimant on the property. According to the Block Operator, Claimant

told him that he had come to East Conway Tower to steal some things, and later told him that he had stolen water and a seven and one-half volt battery. Regardless of whether an inactive employee may come on the property for legitimate reasons, such an individual clearly is not authorized to come on the property for the purpose of stealing Carrier's property. It is not necessary to cite a rule expressly prohibiting such theft. No employee reasonably can claim not to be on notice that theft of company property is prohibited, regardless of whether a formal rule provides so expressly.

The record further established that on August 9, 1993, Carrier reported numerous items missing from the East Conway Tower. On August 10, 1993, Carrier police discovered Carrier cartons which were designed for many of the missing items in Claimant's garbage. On August 11, 1993, Carrier police executed a search warrant and found numerous items owned by Carrier in Claimant's home.

On the property and before this Board, the Organization has maintained that Claimant possessed these items in anticipation of his imminent return to active duty. Carrier did not credit this defense and we see no reason to disturb that finding. Indeed, the evidence does not reasonably permit a finding to the contrary. First, Claimant admitted to the Block Operator that he was stealing the items. Second, there simply is no evidence that Claimant's return to active status was imminent. On the contrary, the only evidence in the record was to the contrary. Third, even if Claimant was expecting to return to active status, there was no reason for Claimant to have the items that were found in his home. Fourth, the items that Claimant had in his home were in such large quantities, that they could not possibly have been intended for use upon return to active status.

The evidence against Claimant was not only substantial, it was overwhelming. The offense was extremely serious. There was no evidence of any mitigating circumstances in this record. Carrier simply is not required to employ progressive discipline in an effort to rehabilitate a thief. The claim will be denied.

AWARD

Claim denied.

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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 6th day of May 1997.