

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Form 1

Award No. 4874  
Docket No. 4878  
93-4-92-4-10

The Fourth Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(The American Railway & Airway  
(Supervisors Association: A  
(Division of TCU

PARTIES TO DISPUTE: (  
(Union Pacific Railroad (Missouri  
(Pacific)

STATEMENT OF CLAIM:

"1. Carrier has violated the Agreement and in particular Rule 17, when as the result of a hearing held June 28, 1991 Mr. S. E. Wilson, Car Foreman was dismissed from all services. Said Discipline is unjust, unwarranted and an abuse of Carrier's discretion.

2. As a result of this violative action, Carrier be required to rescind said discipline, return Mr. Wilson to his former position and make him whole for all lost wages and benefits and clear his record of all reference to the charges."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The Claimant was notified of an investigation on a charge of appropriating railroad property for personal use. Subsequent to the investigation, the Claimant was dismissed from service.

Carrier Rules prohibit appropriation, or unauthorized use of railroad property.

A valid search of Claimant's residence revealed \$4000 to \$7000 worth of Carrier's property.

Subsequently, the Claimant was charged with a criminal offense concerning the property and he pleaded guilty to a Class B Felony of Theft by Receiving, and was sentenced by the Court.

The Claimant has asserted that he was set-up by his former wife since they were in the midst of a divorce proceeding. In addition, the Organization has raised certain procedural issues, such as time limit violation, illegal search and seizure, etc. The Carrier complied with the time limits, and the Claimant sought extensions of time. The charges were sufficiently clear to advise the employee of the charges against him.

The co-owner of the property consented to the search, and in fact had called the Carrier to advise of the storage of its property. Her testimony was not necessary to establish guilt.

The Claimant pleaded guilty to the offense in a criminal court. That is a sufficient basis to establish his guilt in this separate forum.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1993.