

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx Jr. when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician P. J. Derenzo, Jr. was unjustly dismissed from service effective September 2, 1976.
2. That accordingly, the Carrier be ordered to restore him to service with all seniority unimpaired.

Findings:

The Second 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.

After an investigative hearing, Claimant was dismissed from service on September 2, 1976, for the following offense:

"At approximately 6:30 p.m., Monday July 19, 1976, you were arrested for having stolen six coils of copper uninsulated 00 gauge wire weighing approximately 1,213 lbs. and disposing of this material for \$545.85 to T. A. Predel Company, Inc., Schenectady, New York. This wire was taken from a cement block building at CP-14, Town of Mohawk, on the Mohawk-Hudson Division of the Consolidated Rail Corporation at approximately 2 p.m., on Thursday, July 8 and Friday, July 9, 1976."

By written statement prior to the investigative hearing, and at the hearing itself, the Claimant admitted that he had stolen the copper wire referred to in the charge, and had sold it and kept a portion of the proceeds.

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Docket No. 7619
2-CR-EW-'78

The employee and the Organization seek reinstatement on the basis of leniency, supported by a seven-year good work record. As determined in numerous previous awards, matters of leniency are in the exclusive province of the employer and not this Board.

As to the appropriateness of the penalty, theft from the employer is plainly grounds to render an employee unsuitable for future employment. In this case, the matter is exacerbated by considerations that the theft was deliberately planned, substantial in value, and was used to enrich directly the employee and his collaborators. There are no grounds to question the Carrier's action in dismissing the Claimant from service.

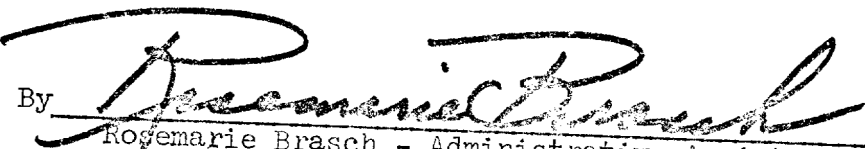
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November, 1978.