

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13150

Docket No. 13011

97-2-95-2-31

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“1. Consolidated Rail Corporation arbitrarily and capriciously suspended and subsequently dismissed Machinist L. C. Flail from service following trial held on March 28, 1994.

2. Accordingly, Machinist L. C. Flail should be immediately restored to service, paid for all time lost, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust dismissal occurred and have his record cleared of any reference to the charges.”

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 were given due notice of hearing thereon.

Until his dismissal Claimant was assigned as a Machinist in the Maintenance Department of Carrier's Enola Diesel Terminal. On March 11, 1994, Carrier informed Claimant that he was removed from service and confirmed that fact in a letter dated March 14, 1994. On March 16, 1994, Claimant was instructed to appear for a trial in connection with the following charges:

"1. Conduct unbecoming a Conrail employee, when on the following dates:

- On June 16, 1993, you were observed at the Mobil Gas Station, Rtes. 11 & 15, Enola, PA, with two (2) 55 gallon drums full of diesel fuel which you had removed from Lucknow Fuel Facility, Harrisburg, PA, and you departed there at quitting time with same without verbal and/or written permission from your supervisor or any other person in authority.
- On August 18, 1993, you were observed operating a pick up truck owned by R. W. Hatten into which you loaded two (2) empty 55 gallon drums and then filled them with diesel fuel at Lucknow Fuel Facility, Harrisburg, PA, after which you departed company property and returned later without any drums without verbal and/or written permission from your supervisor or any other person in authority.
- On August 19, 1993, you were observed operating a pick up truck owned by R. W. Hatten with two (2) empty 55 gallon drums in the rear, you filled the two (2) drums with diesel fuel at the Lucknow Fuel Facility, Harrisburg, PA, and then departed company property without verbal and/or written permission from your supervisor or any other person in authority.
- On October 22, 1993, you were observed in your own personal vehicle with two (2) empty 55 gallon drums in the rear, you were observed filling same at Lucknow Fuel Facility, Harrisburg, PA, and departing company property

without verbal and/or written permission from your supervisor or any other person in authority.

- On December 21, 1993, you were observed receiving three (3) empty 55 gallon drums from R. E. Seltzer, Sr., you placed them in your personal vehicle and filled them full of diesel fuel, you then departed and parked by the Mobil Gas Station at Rtes. 11 & 15, Enola, PA, where you were picked up by R. E. Seltzer, Sr., and taken back to the Enola maintenance Facility, Enola PA. At quitting time, you were returned to your vehicle at the Mobil Station, Rtes. 11 & 15, Enola, PA, and departed without verbal and/or written permission from your supervisor or any other person in authority.
- On December 22, 1993, you were observed with two (2) empty 55 gallon drums in the rear of your personal vehicle which you filled full with diesel fuel and then departed company property without verbal and/or written permission from your supervisor or any other person in authority.

While on duty and under pay as a Machinist, tour of duty 7:00 A.M. to 3:30 P.M., Enola Diesel Terminal, Enola, PA.

2. Aiding and abetting in the theft and unlawful removal of diesel fuel as follows:

- On February 3, 1994, you were observed assisting in the loading of one full 55 gallon drum of diesel fuel into the personal vehicle of M. C. Drewett at GI-8 Air Compressor at the Harrisburg Trail Van Terminal, Harrisburg, PA, without verbal and/or written permission from your supervisor or any other person in authority.
- On February 16, 1994, you were observed filling four (4) 55 gallon drums, which were loaded onto a pallet on a fork lift truck you were operating at the Enola Diesel Terminal, Enola, PA. After you filled the drums, you took them to the

maintenance area with the fork lift truck and stored them at the Enola Diesel Terminal, Enola, PA, without verbal and/or written permission from your supervisor or any other person in authority. Later that night they were missing from the maintenance area.

- On February 17, 1994, you were observed arriving at Lucknow Fuel Facility, Harrisburg, PA, in your personal vehicle with four (4) empty 55 gallon drums. You gave two (2) empty 55 gallon drums to T. J. Breach who put them into his personal vehicle and you then assisted him in filling them. T. J. Breach then assisted you in filling the two (2) empty 55 gallon drums in your personal vehicle. All four (4) drums were then taken to the Enola Diesel Terminal, Enola, PA, and placed by the incinerator and later were secured by the Conrail Police Department as evidence.
 - On February 18, 1994, you were observed arriving at the Lucknow Fuel Facility, Harrisburg, PA, in your personal vehicle with two(2) empty 55 gallon drums. T. J. Breach assisted you in filling them and then you took them to Enola Diesel Terminal, Enola, PA, where they were placed by the incinerator and later were secured by the Conrail Police Department as evidence.
3. Unauthorized possession of a locomotive fuel pump on March 9, 1994, when you advised Conrail Police Officer P. Holtz that you had a locomotive fuel pump belonging to Conrail in your garage at your residence at 140 N. 8th Street, Frackville, PA, during an interview at Conrail Harrisburg Division Corporate Headquarters, 2605 Interstate Drive, Harrisburg, PA, and you did not have written and/or verbal permission from your supervisor or any other person in authority.

While on duty and under pay as a Machinist, tour of duty 7:00 A.M. to 3:30 P.M., Enola Diesel Terminal, Enola, PA. The fuel oil was subsequently removed from Conrail property for private personal use

without written and/or verbal permission of a supervisor and you failed to notify your supervisor or any other person in authority.”

At the outset, the Organization has raised procedural and due process objections to the investigation concerning the incident at issue. After a careful review of the record before the Board we do not find any basis of support for the Organization’s contentions.

With respect to the merits of the case, Claimant admitted to removing fuel from Carrier’s property and converting it to his private use. Accordingly, the Board finds that the Carrier has met its burden of persuasion with respect to all the charges.

AWARD

Claim denied.

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 Second Division**

Dated at Chicago, Illinois, this 8th day of September 1997.