

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13151  
Docket No. 13012  
97-2-95-2-32

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 R. W. Hatten from service following trial held on March 29, 1994.

2. Accordingly, Machinist R. W. Hatten 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 November 18, 1993, while on duty and under pay as a Machinist, tour of duty 7 A.M. to 3:30 P.M., Enola Diesel Terminal, Enola, PA, you were observed in the unauthorized loading of two 55-gallon drums full with diesel fuel at the Enola Diesel Terminal Territory, Enola, PA, and removing same, and then taking them to your residence at 6 Lockwood Drive, Enola, PA, then returning with two empty 55 gallon drums to Enola Diesel Terminal, Enola, PA, without verbal and/or written permission from your supervisor or any other person in authority.
2. Aiding and abetting in the theft and unlawful removal of diesel fuel from Lucknow Fuel Facility, Harrisburg, PA, on August 18 and 19, 1993, when you permitted L. C. Flail to use your private vehicle to take two (2) 55 gallon drums, full of diesel fuel, on each date, from Conrail property, for unauthorized personal use, without verbal and/or written permission from your supervisor or any other person in authority.
3. Unauthorized possession of a Hobart welder on March 9, 1994, when you advised Conrail Police Sergeant D. Thompson, during an interview at Conrail, Harrisburg Division Corporate Headquarters, 2605 Interstate Drive, Harrisburg, PA, that you took same from the Enola Car Shop, Enola PA, and did not have written and/or verbal permission from your supervisor or any other person in authority.

4. Unlawful disposing of contaminated water from your personal fuel system at 6 Lockwood Drive, Enola, PA, into the Enola Treatment Plant, Enola PA, when, at various times, you brought this substance to the Enola Treatment Plant and disposed of same, without written and/or verbal permission from your supervisor or any other person in authority. This violation was reported in your interview with Conrail Police Sergeant D. Thompson at Conrail, Harrisburg Division Corporate Headquarters, 2605 Interstate Drive, Harrisburg, PA, on March 9, 1994.
5. Unauthorized possession of a pump from a steam generator on March 9, 1994, when you advised Conrail Police Sergeant D. Thompson, during and interview at Conrail, Harrisburg Division Corporate Headquarters, 2605 Interstate Drive, Harrisburg, PA, that you took same without written and/or verbal permission from 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. He also admitted to the other actions charged. Accordingly, the Board finds that the Carrier has met its burden of persuasion with respect to all the charges.

### **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 Second Division**

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