

Parties to Dispute: { System Federation No. 4, Railway Employees'
Department, A. F. of L. - C. I. O.
(Boilermakers)
Baltimore and Ohio Railroad Company

- (1) That under the Current Agreement Boilermaker, Paul Gordon, was unjustly dismissed from the services of the Chessie System (Baltimore and Ohio Railroad Company) as a result of an improper hearing held at 9:00 A.M. Monday, August 29, 1977, in connection with the theft and removal from company property of 150 ft. of #1 Copper Insulated Cable from the Cumberland Locomotive Shop, at about 3:30 P.M., Sunday, August 21, 1977.
- (2) That accordingly the Carrier be ordered to restore Boilermaker, Paul Gordon, to service with seniority rights unimpaired, compensate him for all time lost retroactive to September 19, 1977, make claimant whole for all vacation rights, pay the premium for hospital, surgical and medical benefits for all time held out-of-service, pay the premium for group life insurance for all time held out-of-service.

On August 21, 1977, during his tour of duty between the hours of 3:00 P.M. to 11:00 P.M., Claimant requested of an Extra Supervisor that he be furnished a quantity of #1 copper cable to be used as an electrical lead on a welder. At the hearing, the Extra Supervisor testified that Claimant told him the copper cable he requested was needed as a replacement for a defective electrical lead on the welder assigned for his use in the shop. However, Claimant testified he told the Extra Supervisor he needed the cable for the machine he was using and that the Extra Supervisor just assumed that he meant his shop welder when in fact Claimant was referring to his privately owned welder which he used in working on free lance

jobs at home. In response to Claimant's request, the Extra Supervisor directed an Electrician Helper to cut approximately a one-hundred (100) foot piece of #1 copper cable and to leave it rolled up in the Water Bay area. At about 8:30 P.M., Claimant, according to his own testimony, removed the copper cable from the company's premises and put the cable in his truck. According to a statement by a co-worker, a Pipefitter, and Claimant's further testimony, the Pipefitter observed Claimant removing the cable and putting the cable in the truck. At about 10:45 P.M., fifteen minutes before the tour of duty ended, the Pipefitter reported to the Assistant Superintendent of Production that he had observed Claimant taking the copper cable. The Assistant Superintendent in turn contacted the Claimant about the cable and advised him to return the cable, which Claimant did the following day, August 22, 1977. Subsequently, the Pipefitter made a formal complaint to the Assistant Manager of Shops thereby causing an investigation.

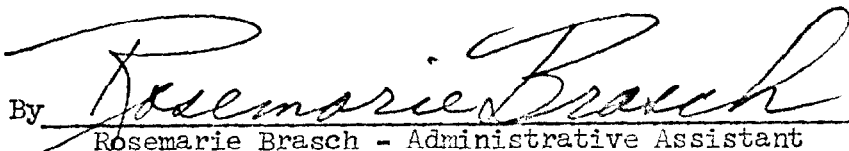
The Board has examined the record carefully and thoroughly and we conclude the Claimant received a fair and impartial investigation. Furthermore, the record clearly establishes as reflected by Claimant's own testimony and admission that he was in fact guilty of taking company property and removing said property from company premises. We find we cannot even allow as mitigating circumstances Claimant's expressed motive that he was just borrowing the cable for his own personal use and intended all along to return the cable when he was finished, because of the deception he employed when requesting the cable. By his own admission, Claimant stated he did not tell anyone about the intended use of the cable nor did he ask anyone's permission to remove the cable from company premises. Though Claimant might have in fact returned the cable on his own, this Board will never have the benefit of knowing whether that would have actually occurred had he not been observed taking the cable and subsequently advised to bring the cable back. The preponderance of evidence contained in the record proves Claimant was guilty of theft as charged and we so affirm.

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 9th day of January 1980.