

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10538
Docket No. 10446-I
2-B&O-I-CM-'85

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (Kenneth A. Roach
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(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

Petitioner, Kenneth A. Roach was discharged from services of the Railroad and request (sic) reinstatement as a Carman, at the Butler Yard, at Butler, Pennsylvania, because he believes he would be a trustworthy employee to the railroad, and because he believes that his experience with the railroad of Thirty-Two Years (32), should entitle him to consideration for re-employment.

Findings:

The Second 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 employes 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.

On December 30, 1981, the Claimant was charged with his responsibility, if any, in connection with the unauthorized possession and sale of journal brass belonging to the Carrier between the dates of June, 1980 and March, 1981. The Claimant received proper notice of the charges, and appeared with duly accredited representatives of the Organization at the investigatory hearing held on January 20, 1982.

The evidence of record established that Claimant engaged in twenty-nine (29) unauthorized sales of railroad journal brass to the Fitzsimmons Metal Company, Inc. of Glenshaw, Pennsylvania. Claimant sold a total of 39,388 pounds of the Carrier's brass for his own personal gain without authority from the Carrier. The brass sold by the Claimant had a fair market value at the time of sale of \$23,416.67. Claimant admitted that he obtained the journal brass by removing large amounts of the metal from the shop track in his personal vehicle.

This Board is faced with an appeal by the Claimant based solely on a claim for leniency. There is no claim that the investigation conducted on the property was unfair or partial, or that the Carrier failed to prove the charge of unauthorized possession and sale of journal brass. No violation of the controlling Agreement is asserted by the Claimant.


This Board is without jurisdiction to modify discipline administered by the Carrier based upon leniency alone. The thirty-two (32) years of service by Claimant with the railroad cannot insulate him from discipline, including the severe penalty of dismissal where a serious offense has been committed. Claimant's long period of employment with the Carrier should have impressed upon him the seriousness with which theft of property is viewed by the Board. The theft committed by Claimant was not an isolated incident, but occurred over a long period of time. Claimant's conduct included twenty-nine (29) separate, unauthorized sales of the journal brass for his personal gain. The Claimant was properly subject to discipline, and the discipline imposed was fair, reasonable and based upon sufficient credible evidence of record.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1985.