

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13149

Docket No. 13010

97-2-95-2-30

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 T. J. Breach from service following trial held on March 29, 1994.

2. Accordingly, Machinist T. J. Breach 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 February 17, 1994, 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, you were observed filling two (2) 55 gallon drums on the rear of your personal vehicle with diesel fuel and then removing same from Conrail property without written and/or verbal permission from your supervisor or any other person in charge and transporting the two (2) 55 gallon drums filled with diesel fuel to Halifax, PA, and returning same to Enola Diesel Terminal, Enola, PA.**
- 2. Aiding and abetting in the theft and unlawful removal of diesel fuel oil as follows:**

  - On August 18, 1993, you were observed assisting L. C. Flail to load and fill two (2) 55 gallon drums with diesel fuel which were on the back of R. W. Hatten's personal pick up truck at Lucknow Fuel Facility, Harrisburg, PA, without verbal and/or written permission from your supervisor or any other person in authority.**
  - On August 19, 1993, you were observed assisting L. C. Flail to load and fill two (2) 55 gallon drums with diesel fuel which were on the back of R. W. Hatten's personal pick up truck at Lucknow Fuel Facility, Harrisburg, PA, without verbal and/or written permission from your supervisor or any other person in authority.**
  - On October 22, 1993, you were observed assisting L. C. Flail to load and fill two (2) 55 gallon drums with diesel fuel in the back of his personal pick up truck at Lucknow Fuel Facility, Harrisburg, PA, without verbal and/or written permission from your supervisor or any other person in authority.**

- On February 17, 1994, you were observed assisting L. C. Flail to load and fill two (2) 55 gallon drums with diesel fuel in the back of his personal pick up truck at Lucknow Fuel Facility, Harrisburg, PA, without verbal and/or written permission from your supervisor or any other person in authority.
- On February 18, 1994, you were observed assisting L. C. Flail to load and fill two (2) 55 gallon drums with diesel fuel in the back of his personal pick up truck at Lucknow Fuel Facility, Harrisburg, PA, 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. The fuel oil was subsequently removed from Carrier property for private personal use without written and/or verbal permission of your 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 own and others' private use. 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.**