

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES**
THE NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT
(Except Boston and Albany Division)
AND NEW YORK DISTRICT

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5487) that:

1—Carrier violated current and existing Agreement when, on August 12, 1963, it arbitrarily, capriciously and improperly discharged Robert N. Green, Watchman at Weehawken Freight Station, Weehawken, N. J., without proper and just cause.

2—Mr. Green be returned to service without impairment of seniority rights,

3—Mr. Green be reimbursed for all monetary loss sustained on and after July 30, 1963, the day he was removed from the service of the Carrier.

OPINION OF BOARD: The record is clear and convincing in this case that the employe, Robert N. Green, is guilty of the charge of pilferage of freight from cartons on Pier 2, Weehawken Freight Station. Employes have attempted to use Green's acquittal by the Weehawken, N. J. Magistrate's Court, as a defense to the Carrier's action. It is basic that the evidence which is admissible, and the degree of proof which is necessary for a conviction, varies greatly between a criminal case, in a court of record, and that to be found in a discipline case on the property. We have held that an acquittal by a court is not a bar to disciplinary action by the Carrier. Therefore it would appear that if everything else is in proper order, this point raised by the employes would have no effect on the outcome of the claim.

There is some dispute about the hearing on the property. The hearing was set for 2:00 P. M. The record disclosed that the employe had actual written notice of this hearing. He did not appear. After the hearing had been completed, he contacted the Carrier seeking a delay. This was too late. The notice was proper and the hearing was held on time as scheduled.

This Board has held that dismissal is not excessive in cases involving fraud and dishonesty. It has also held that a request for leniency is within the managerial discretion of the Carrier. In view of these principles, we do not feel

that we should disturb the action of the Carrier in this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1964.