

Award No. 13674
Docket No. CL-15050

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5617) that:

(1) The Carrier's action in dismissing Mr. G. E. Bishop, Yard Clerk, Fort Worth, Texas, was unreasonable and unjust.

(2) That Mr. Bishop now be restored to service of the Fort Worth and Denver Railway Company with all rights and privileges unimpaired and paid for all wage loss sustained retroactive to July 24, 1963.

OPINION OF BOARD: Claimant, a Yard Clerk, was dismissed from Carrier's service, after a hearing had been held in the matter, for taking fertilizer that belonged to a corporation located on Carrier's track at Fort Worth, Texas.

The hearing appears to have been free of material prejudicial defect and while it would have been preferable for Carrier to have sequestered the witnesses, no reversible error was committed by its failure to do so. We do not agree with Petitioner that the notice of hearing was defective; it clearly put Claimant on notice of the specific nature of the charges leveled against him and the time and place in question.

Based on an examination of all the evidence, we are satisfied that Claimant's identity has been properly established by the witnesses. Carrier's findings are amply supported by testimony of a truck driver and one of Claimant's fellow Yard Clerks. Their testimony is particularly damaging to Claimant's case and there is no showing that they were motivated by malice or any other improper consideration. While estimates varied as to the amount of fertilizer Claimant had taken, it, in any event, according to the Yard Clerk's and truck driver's testimony, exceeded the number of bags accounted for by the receipt Claimant produced.

Under the circumstances of this case we will not disturb Carrier's findings, supported as they are by substantial credible, though controverted, evi-

dence, or substitute our judgment for that of Carrier as to the measure of discipline that is appropriate. See Award 13130, 10930, 10429 and 9422. The claim will be denied.

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 17th day of June 1965.