

Award No. 17078
Docket No. CL-17613

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Supplemental

Morris L. Myers, Referee

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6456) that:

1. Carrier violated the provisions of the Rules Agreement when it improperly suspended Freight Handler C. Manning from service for ten (10) days and that,

- (a) C. Manning shall be paid ten days' pay at the pro rata rate of Freight Handler position.
- (b) C. Manning's record shall now be cleared of the actual ten days' suspension.

OPINION OF BOARD: The Claimant in this case, Mr. C. Manning, was on December 31, 1966, a Freight Handler stationed at Port Covington, Baltimore, Maryland. On January 5, 1967, Mr. Manning was given written notice to attend an investigation to determine his responsibility "for alleged larceny of merchandise from Pier 9, Port Covington, Western Maryland Railway Company" while he was working as freight handler on December 31, 1966.

A hearing was conducted on January 10, 1967 and evidence was taken. Mr. Dennis Samuel, Patrolman for the Carrier, testified that Mr. Manning was seen by him (Samuel) in Pier 9 with a brown package in his hand which he threw to the pier upon seeing Samuel. Samuel testified that this occurred immediately after he saw another freight handler, identified by Samuel as being Mr. J. L. Darden, a fellow worker of Mr. Manning, and that Mr. Darden yelled, "Here comes the police." Mr. Samuel further testified that there was no doubt in his mind as to the identification of both Mr. Darden and Mr. Manning. The contents of the brown package were found to be five bowls and other items that were part of cargo that was being warehoused in Pier 9.

Both Mr. Darden and Mr. Manning both denied the truth of Mr. Samuel's testimony. However, on the basis of the investigation, the Carrier suspended the Claimant for ten days for "Larceny of merchandise from Pier 9, Port

Covington, on December 31, 1966, while employed as freight handler." It is this suspension that the Claimant challenges herein, asserting that the suspension was violative of the Agreement in that he was not guilty of the offense as charged and that, even if he were guilty, the discipline that was assessed was excessive.

This Board has held in many prior Awards that it will not substitute its judgment for that of the Carrier in the absence of a showing that the Carrier's action was arbitrary or capricious, or taken in bad faith. In this case, no such showing was made by the Claimant, either as to the finding of the Carrier regarding his guilt or as to the degree of discipline assessed against him. Further, the assertions by the Claimant that there was no "larceny" because nothing was stolen, that the Carrier in its ex parte submission changed its characterization of Claimant's activity from "larceny" to "looting", and that, consequently, the Claimant was not guilty as charged, are devoid of merit.

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 Employee involved in this dispute are respectively Carrier and Employee 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 23rd day of April, 1969.