



Award No. 18361

Docket No. TE-18734

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
BOSTON AND MAINE CORPORATION**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Boston and Maine Corporation, TC-5724, that:

1. Carrier violated the Agreement between the parties when, after charging R. J. White, Relief Leverman-Director at Tower "A," Boston, Massachusetts, with larceny of B&M Radio Phone No. 110 from Caboose C-120 at Concord, New Hampshire on February 16, 1969, it decreed him guilty with no substantive evidence to support such finding and dismissed him from the service.

2. Carrier shall, as a result compensate R. J. White the daily rate of his former position for each work day lost, commencing August 1, 1969, until returned to service thereon.

OPINION OF BOARD: On February 16, 1969, a caboose in the Concord, New Hampshire, yard was broken into. In addition to certain other items, a two-way radio owned by the railroad was stolen. On July 18, 1969, Claimant was involved in a car accident and the police officer investigating the accident found a two-way radio in Claimant's pickup truck. Claimant admits that the radio was owned by Carrier, but insists that the same was found by him and that he put it on his pickup with the intention of returning it to the Carrier. Claimant was charged with Larceny of the radio from caboose located at Concord, New Hampshire, on February 16, 1969. The investigation hearing resulted in Claimant being discharged by Carrier.

This Board finds that the record does not support the action taken by Carrier in discharging this employee. It may well be that this Claimant might have had a part in the taking of the radio in question; however, in this type case, the Carrier is required to prove that the action taken was justified; that the action taken was not arbitrary or capricious; and that the action taken was commensurate with the offense charged and proven. In this case, the corpus delicti was not proven in that the Claimant was never proved to be in the vicinity of the location of the robbery at the time of the robbery. It would be mere speculation not based upon competent probative evidence to uphold Carrier in this instance and could very well have the effect of drastically penalizing an innocent party. This, the Board can not and will not do. Carrier has also vigorously argued that the Organization abandoned

Claimant's monetary claim on appeal to the highest designated officer on the property. This contention, although vigorously argued, is not well taken. Paragraph 3, Article V, of the August 21, 1954, Agreement states in unambiguous language that the original notice of the request for reinstatement with pay for time lost should be sufficient. Therefore, this Board finds that Carrier should be required to reinstate this Claimant, with all previous rights restored, and to compensate him the daily rate of his former position for each work day lost commencing August 1, 1969, until returned to service thereon.

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 violated.

AWARD

Claim sustained in accordance with the above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December 1970.