

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20245
Docket Number X-20316

Irwin M. Lieberman, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Central Vermont Railway, Inc.

STATEMENT OF CUM: Claim of ~~the~~ General ~~Committee~~ of the ~~Brother-~~
hood of Railroad Signalmen on the Central Ver-
mont Railway, Inc. that:

(a) Carrier failed to prove its charges against Signal Helper G. A. Nichols in connection with the alleged unauthorized removal of copper wire ~~from~~ Railway property and the subsequent sale of the wire to a scrap dealer.

(b) Carrier reinstate Signal Helper G. A. Nichols to service and pay him for all time lost subsequent to August 4, 1972.
/Carrier's File: CV 6896 and 4440-4/

OPINION OF BOARD: Claimant was discharged on August 4, 1972, after an investigatory hearing held on July 25, 1972, for the unauthorized removal of copper wire from Carrier's property and the subsequent sale of the wire to a scrap dealer. The record ~~indicates~~ that Carrier had discovered that amounts of used copper wire were found to be missing, in early June 1972; this wire was at track-side after a pole rehabilitation program and was to be coiled and salvaged. Claimant was a Signal Helper and had been working on the pole line rehabilitation program.

Claimant was the only witness at the investigation, and no documents were introduced. The transcript of the investigation reveals the following evidence: Claimant sold 970 pounds of copper wire to a scrap dealer on or about May 15, 1972; Claimant stated that the wire did not come from Railway property and refused to indicate where he had obtained the wire. There is no other evidence. Carrier concluded that Claimant was lying and that he had stolen the wire from the property.

Carrier argues cogently that the Board may not substitute its judgment for that of the Carrier on the issues of guilt and discipline. Carrier contends, with significant precedent and force, that dismissal from service is an appropriate measure of discipline for dishonesty. Carrier argues further that the ~~Organization's~~

request for Leniency during the handling on the property is indicative of Claimant's guilt. On this Last point, in addition to the Organization's denial ~~that~~ it ever requested leniency, it is well established that an offer to settle does not in itself constitute an admission of violation (Award 18045).

Carrier has cited many well reasoned Awards in support of its thesis that the Board should not substitute its judgement for that of the Carrier in this dispute. In all of those Awards we note the proviso, however, that we will not disturb the Carrier decision where it is supported by substantial evidence. In **this** dispute the record of the investigation is devoid of any significant evidence establishing Claimant's guilt. An **employee** should never be dismissed lightly and in this case the Carrier has simply not presented evidence to support its conclusion; it has not met its burden of proof and credibility is not in issue. The Claim **must** be sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.