

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20409
Docket Number CL-20564

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight **Handlers, Express** and
(Station **Employees**

PARTIES TO DISPUTE: (

(The Central **Railroad** Company of New Jersey
((R. D. **Timpany, Trustee**)

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood (GL-7489) that:

(a) Carrier violated the Clarke' **Agreement, with specific** reference to **Rule** No. 37 - **REPRESENTATION, INVESTIGATION, OR HEARING**, on July 25, 1972, when it **summarily** dismissed **John Dobstetter**, Section **Stockman**, Elizabethport, N.J., from **service**, and

(b) Carrier shall be required to reinstate **John Dobstetter** to service with seniority and all other rights unimpaired, and

(c) Carrier shall be required to **compensate** **John Dobstetter** all wages and other losses **commencing** July 14, 1972, and to **continue** until **re-instated** to Carrier's **service**, account their **summary** dismissal, and

(d) Carrier shall be required to clear **John Dobstetter's** record of all alleged **charges** or allegations **which** may have been recorded thereon, as the result of the alleged violation **named** herein, and

(e) For any month **in which** claim is here made for **compensation** on behalf of the **Claimant** involved, the Carrier shall also make premium payments on behalf of **the Claimant** in the appropriate Contract Policy Travelers Insurance GA-23000, as prescribed in their contract.

OPINION OF BOARD: **Claimant, an employee** with more than 30 years' **service**, was **dismissed from** service **following** an investigation in which it was developed that **Claimant** participated in the removal of 20 sheets of plywood from **company** stores. At the investigation, **Claimant** testified that he was of the **opinion** that the plywood removed from company premises, with the assistance of another company **employee** and in a **company-owned** vehicle, was scrap material and was to be discarded. Within a few hours after the removal, but after being confronted by his supervisor with **questions** concerning the **removal**, **Claimant** made **arrangements** to have the plywood returned to the shop from which it was taken. **Claimant** readily admitted to the **removal** transaction but denied he knowingly participated in the dishonest act of theft.

We are aware of, and do not challenge, holdings of this Board that the **Company** may discharge dishonest employees. We are also aware that on occasion an act that appears on the surface to be dishonest may be the result of an honest mistake or misunderstanding. Applying this logic to Claimant's case leads us to a quandary, especially when considered with Claimant's past record, his years of service, and the principle:

".... that the purpose of administering discipline to employees for infractions of rules is not to **inflict** punishment but rather to rehabilitate, correct and guide employees in the proper performance of their assigned tasks. The ultimate penalty of dismissal is reserved for repeated and serious infractions of work or conduct rules. This is particularly so **in** the case of veteran employees . . ." (Award 19037, Cull)

Accordingly, if Claimant, with over thirty years of **service, was** discharged as a result of an honest mistake, then this Board would have the obligation to return him to **service** and pay him for his time lost. On the other hand, if dishonesty is involved and the Claimant intended to divert company **material** to his personal purposes, then the discipline should stand. Careful scrutiny of the Record demonstrates that the Carrier has not made a prime facie case (its obligation) that Claimant was not told that the plywood was scrap and that he could have it for his own use.

However, this Claimant lacks the prerequisite of an unblemished record that would place him in good standing for complete vindication and payment of wage losses. In our Award 17564 (Sitter), we returned **Claimant** to service without lost pay after he had been discharged for improperly accepting gratuities from shippers while responsible for the assignment of empty piggyback trailers, as well as a violation of **Rule G**. Our Record in that case disclosed sufficient evidence to support a finding of guilty, but we held that the penalty was excessive and should be reduced.

In view of the fact that certain questions do exist in the instant Record, we will order that the penalty **imposed** by Carrier be reduced and that Claimant be restored to service with seniority and other rights ~~unimpaired~~ but without compensation for time lost.

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;

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

That the claim should be disposed of as stated in the Opinion.

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Carrier is directed to restore Claimant to **service** with seniority and other rights unimpaired but without **compensation** for time lost.

NATIONAL **RAILROAD ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.