

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21388
Docket Number CL-21544

Robert M.O'Brien, Referee

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

PARTIES TO DISPUTE: (

(Fort Worth and Denver Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
m-8075, that:

1. Carrier violated and continues to violate the rules of the Agreement, the provisions of the investigation and hearing procedures and acted in an arbitrary and capricious and prejudicial manner when it dismissed Mr. T. L. Phelps as a result of an investigation held on May 28, 1975.

2. Carrier shall now be required to compensate Mr. T. L. Phelps for all wage loss incurred including overtime and all benefits he is entitled to under the existing Agreements beginning May 22, 1975 and continuing until Mr. Phelps is returned to service with all rights and privileges unimpaired.

3. Carrier shall also be required to compensate Mr. Phelps ten (10%) percent interest per annum to become effective thirty (30) days from the date Mr. Phelps was withheld from service.

OPINION OF BOARD: Claimant was notified to attend. an investigation for the purpose of investigating his alleged absence from duty and theft of lumber from cars in the 17th Street Yard, Fort Worth, Texas, at about 1:30 P.M., May 21, 1975. Following the investigation, Claimant was adjudged responsible for the theft of lumber from the 17th Street Yard and dismissed from service.

This Board is called upon to determine whether Carrier has proven the aforementioned charge by substantial evidence, and to determine whether Carrier accorded Claimant the due process rights guaranteed him by Rule 37 of the controlling Agreement. We conclude that both questions must be answered in the affirmative.

There is no support for the Organization's contention that the notice of charge presented Claimant was not precise. The notice adequately apprised Claimant of the charges which were the subject of the investigation, and afforded him ample time to prepare his defense thereto. Moreover, neither Claimant nor his representative requested a postponement of the

investigation in order to prepare his defense. Accordingly, Rule 37 was not violated.

At the investigation Claimant admitted **removing** lumber from the 17th Street Yard. In fact, twenty-seven pieces of lumber were **found** at his home. While Claimant contends that he was given permission to remove the lumber there is no persuasive evidence in the record to support that averment. Rather, the evidence evinces that Claimant did not have **such** permission nor was there any practice to this effect on the property. Moreover, the lumber was not scrap as insisted by the Claimant..

This Board finds from the evidence adduced at the investigation that Claimant had taken lumber from the 17th **Street** Yard in violation of Carrier's Consolidated Code Rule 700 (B) which Rule renders theft-a dismissible offense. It is of no consequence that Claimant was **unfamiliar** with Rule **700** (B). Common sense dictates that he certainly was aware that theft was morally wrong and would not be condoned by the Carrier. There is substantial evidence in the **record** to find Claimant guilty of theft and his dismissal from service as a result was not arbitrary, capricious or **unreasonable**.

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;

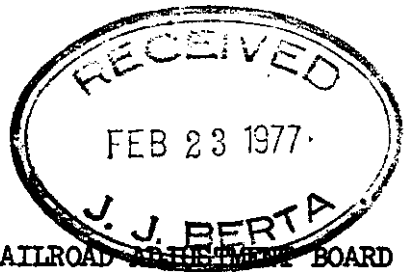
That the Carrier and the **Employee** involved **in** this dispute are respectively Carrier and **Employee** within the meaning of the Railway Labor Act, as **approved June 21, 1934;**

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

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **28th** day of January 1977.