NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21548

THIRD DIVISION Docket Number CL-21706

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Consolidated Rail Corporation
(Former Lehigh Valley Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-8145, that:

(a) The Carrier violated the Agreement when it dismissed Freight Agent, A. A. Marrone from service on March 14, 1975.

(b) Carrier's action was extremely harsh and excessive under the circumstances involved.

(c) Carrier be required to restore A. A. Morrone to service with his seniority and all other rights unimpaired, and he be compensated for all wage losses incurred retroactive to February 26, 1975.

OPINION OF BOARD: Claimant herein held the position of freight agent at Batavia, New York with a hiring date of April 6, 1966. He was discharged by letter dated March 14, 1975, after an investigative hearing, for having unauthorized repairs made to his automobile and charging the repairs to Carrier.

There is no question as to Claimant's guilt, as he admitted it at the investigation. Further, there have been no procedural questions raised. In the course of the handling of this dispute on the property the Organization argued that there was no intent to defraud evident. Additionally, the General Chairman stated, in a letter dated December 18, 1975:

> "This refers to our several conversations regarding discipline assessed against Mr. A. A. Marrone and our request for leniency in this matter.
>
> I would appreciate your consideration in this matter so that Mr. Marrone may be promptly restored to service with seniority and all other rights unimpaired."

Based on the foregoing, which was part of the final handling on the property, it is apparent that the case before us involves a plea for reinstatement solely on a leniency basis. This Board has found on many occasions that the punishments assessed by a Carrier was excessive, arbitrary or capricious.

However, we have consistently held that the reinstatement of employes based on leniency is exclusively within the discretion of Carriers (see Awards 20236, 19490, 18901, 18360 and many others).

It is apparent that Claimant in this dispute was guilty of a dishonest act, as charged by **Carrier.** The discipline imposed by Carrier, though severe, is clearly appropriate. Finally, as indicated above, we are not empowered to grant leniency and hence have no alternative but to deny the Claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.