

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21687
Docket Number MS-21889

James F. **Scearce**, Referee

(Vincent A. Regalado
PARTIES TO DISPUTE:. ((The Atchison, Topeka **and Santa Fe** Railway Company

STATEMENT OF CLAIM: This is to serve notice; as required by the roles of the National Railroad Adjustmeat Board, of my, Vincent A. Regalado, intention to file an **ex** parte submission on or about November 20, 1976, covering an **unadjusted** dispute between me and the Atchison Topeka and the Santa Fe Railway Company, involving the question:

My being improperly removed from service for violation of Rules 16 and 30 of the Rules for Guidance for Employees, 1975. And that the carrier violated the intent and provisions of the Clerks Agreement, Rules **1**, 4, 5, 6, 8, 24, 26, 31, **and** 60.

It is respectfully requested that I, Vincent A. Regalado, be reinstated into service with full pay for each and every day held out of service and with all past rights restored.

OPINION OF BOARD: On October 19; 1975, Claimant was found with twelve cartons of merchandise in his station wagon parked adjacent to Carrier's freight house. A check of trailers at the freight house developed that they had been broken into, and that they contained merchandise of the same type as that in Claimant's station wagon. His explanations for possession of the merchandise, which he **admitted** loading into his station wagon were that:

- (1). A friend gave him two dollars to take the boxes to his house;
- (2). They were for his companion's children;
- (3). **An unknown** person gave him seven dollars to deliver the cartons to a location under a bridge and just leave them there.

Pilfering and theft are, of course, matters of serious concern and we are satisfied that in the present case, the evidence submitted is sufficient to **support the** charges. Claimant's manifestly inadequate and inconsistent explanations for the presence of the merchandise in his vehicle

at 6 A.M. on a Sunday when he was not on duty, **remove** any possibility of his **claim's** success.

Claimant has raised as a principle defense the dismissal of charges against him in a preliminary court hearing due to a lack of probable cause. This narrow and technical ruling - rendered because the claimant was not physically in his **own** car **where the** stolen goods were placed - cannot offset the overwhelming evidence connecting him to goods that were stolen and their theft. Further, it is well established that decisions in a court of law do not bar enforcement of rules and regulations by a company.

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;

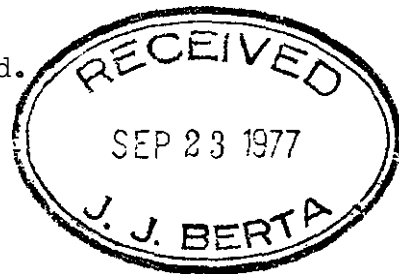
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was not violated.

A W A R D

Claim is denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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