

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21722

Docket Number CL-21892

James F. **Scearce**, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Western Maryland Railway **Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8271, that:

(1) Carrier violated the Agreement between the parties when
it arbitrarily dismissed Freight **Handler E. S. Duppins** from service
effective December 23, 1975.

(2) Carrier shall, as a result, be required to reinstate
Mr. **Duppins** to service with all rights unimpaired and compensate him
for all wage loss suffered.

OPINION OF BOARD: The cause for action in this case stems from the fact
that on December 4, 1975, claimant was found by
Carrier's Police Officers leaving Carrier's property with 19 rolls of
toilet tissue in the trunk of his automobile. After a hearing on the
charge of "alleged theft" of the toilet **tissue**, and under the **terms** and
conditions of a prior reinstatement to service Agreement dated March 3,
1972, claimant was dismissed from Carrier's service effective December
23, 1975.

The Agreement of March 3, 1972, referred to above which was
signed by both the claimant and the organization resulted from a request
to reinstate claimant to service **on** a leniency basis following a prior
proven incident involving "larceny **of** merchandise" and contained the
following pertinent terms and conditions:

"* * * It is understood and agreed that the
Railroad has the full and absolute right in
its own discretion without the right of contest
or challenge by Mr. **Duppins** or his representatives
by **virtue** of any rule or requirement contained in
said agreement with the BRAC or by challenge in **any**

"Court, to dismiss Freight Handler Duppins if it determines by way of investigation of any report or information that the claimant has misappropriated **company** property or material entrusted to its care. This determination shall be within the sole **judgement** of the Railroad and shall not be subject to any standards of or challenge by the **laws** of this State or otherwise. Any such termination shall be with permanent loss of any seniority theretofore accrued by **Mr.** Duppins. It is agreed that the requirements of Rule 30 of the agreement with the BRAC are waived as above set forth insofar as any future misappropriation of property or material by Mr. Duppins is concerned and all parties signatory hereto hereby agree that no claim shall be made for loss of earnings incident to the termination of employment and forfeiture of seniority of E. S. Duppins as a result of his violation of the within agreement.
* * *."

The hearing record in the instant case contains substantial evidence, including claimant's own contradictions and admissions, to show that the merchandise in question was Carrier's property which claimant picked up at the storeroom on the day in question and "forgot to put it where it was supposed to go."

The organization contends that Carrier's reference to the March 3, 1972 Agreement is indicative of "predisposition by the Carrier, so much so as to indicate prejudice against Mr. Duppins."

We do not agree.

Instead, the following Opinion expressed in First Division Award No. 23025 (**Zumas**) is applicable here and we adopt and endorse it:

a "The Board is of the opinion that the claim **must** be denied. Claimant and his Organization representative entered into a binding agreement accepting limited and conditional service in consideration for reinstatement. Presented with such binding agreement, there is nothing to be adjudicated before this Board."

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.