

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21955
Docket Number NW-22009

George S. Roukis, Referee

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employees**
(**Louisville and Nashville Railroad Company**
(**Monon Division**)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The dismissal of Machine Operator H. L. Newman **was** without just **and sufficient** cause and excessively disproportionate to the offense with which charged (System File D-106091 E-306-17).

(2) The Carrier shall restore the claimant to service with seniority and all other rights unimpaired **and** with pay for all time lost.

OPINION OF BOARD: The **claimant** was dismissed for having **company** property in his possession, to wit, a track jack. /
The issue before this Board, specifically regards the appropriateness and severity of the discipline.

Careful **examination** of the record reveals that claimant had been disciplined for fifteen (15) days some eight years prior to the instant **matter** for misappropriation of company **owned** metals. **His** employment record thereafter was unblemished. **Acting on an anonymous** tip that claimant was selling company wire, Company police officials visited his home on May 31, 1975 and received permission to search his premises. The track jack was found in his garage. While there is no conflict respecting claimant's unreserved acquiescence to the search, there is a dispute regarding claimant's assertion that he apprised the officers that they would find a track jack in the garage. The **investigators contend** contrariwise. **Nevertheless,** the **aforsaid property** was **found** in full view in claimant's garage. 2

Subsequently thereafter he was charged with unauthorized possession of the track jack and freely admitted same **during** the investigation. However, he vigorously argued that he had just borrowed **it.** 3

Moreover, while cognizant that testimony was presented alleging claimant sold wire, the Board observes that it was inconclusive, 'unsubstantiated and not part of the charge.

We have searchingly reviewed all pertinent evidence **and**, believe that **claimant** sincerely felt he had not committed a wrongful act. Had he anything to hide it is reasonable to conclude he would have denied permission for the search.

As the claimant later realized and admitted he did **not have** permission to the track jack. This Board hopes that after two and one half years out of Carrier's employ, claimant has **come** to the startling conclusion that possession of company property, stolen or otherwise without permission, is a serious offense. Although there is that reasonable quantum of evidence to sustain dismissal, we feel, considering all the facts and circumstances, the discipline claimant has already experienced served its punitive as well as rehabilitative purposes. We will reinstate **claimant** with all seniority rights restored, but without back pay for **time** lost.

Examination of First, Second and Third Division Awards reveal the **remediative** thrusts of disciplinary decisions. Claimant had been a satisfactory **employee** for the eight years prior to this incident. He was responsive to Carrier's department requirements. We certainly don't countenance or excuse irresponsible or reprehensible behavior. Claimant's **actions** were clearly unacceptable. We are compelled **to** counsel **claimant** that we consider this the final opportunity for him to learn the elementary distinctions between authorized and unauthorized possession of company property. **Prompt and permanent** dismissal would be appropriate if claimant in the **future** manifests recidivist behavior.

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

The Agreement was violated to the extent expressed in the Opinion.

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Claim sustained to the extent expressed in the Opinion.

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

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this **15th** day of **March 1978**.