

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22021**
Docket Number CL-21934

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and **Station Employees**
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific
(**Railroad Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8306, that:

1. Carrier acted arbitrarily, capriciously, in abuse of its discretion, and in violation of the Clerks' Rules Agreement at Milwaukee, Wisconsin when it failed to afford a fair and **impartial** investigation and dismissed George **Lahmann** and Daniel **Dawe** from service November **5, 1975** without proving charges against them.

2. Carrier **shall** now be required to restore Messrs. **Lahmann** and **Dawe** to the positions they held at the time of dismissal, with all rights and privileges unimpaired, and pay them **for all time** lost commencing November **6, 1975** and until they are restored to service.

OPINION OF BOARD: On November **6, 1975**, the Claimants (Storehelpers) were notified of charges as follows:

"1. Damaging company property on November **5, 1975** on **or about 1:30** p.m. when you forced entry into building **SD-38**.

2. Illegally entering a **company** building on **November 5, 1975** approximately **1:30** p.m. for the purpose of stealing company material.

3. Absenting yourself from your assigned place of duty on November **5**, at **approximately 1:30** p.m.

4. Stealing company property consisting of four (4) marker lamps on November **5** at approximately **1:30** p.m."

Subsequent to investigation, both Claimants were dismissed **from service for** violation of **charges 2, 3 and 4**. In **January of 1976**, they were reinstated on a leniency basis.

The **employees** deny any **complicity** and state that they observed that the outside door to the building was open (as they passed the building during a break) and they looked in as a **matter** of curiosity. **One** entered the building, and the two were apprehended by Supervisors who accused **them** of **attempting** to steal marker **lamps**.

Although the **Employees** deny it, there is evidence that they admitted their involvement to Carrier's Officers.

Regardless of the extent of the charges, we are of the view that the Carrier presented substantive evidence to establish guilt.

There is no basis of record to suggest that the **Employees** had any reason for being in the area. We would presume that the more appropriate a&hod of **dealing** with a door "ajar" would be to notify someone in authority, rather than performing their own investigation. **Finally, we** note that the **Employees** attempted to avoid detection when they were observed.

The restoration to service **makes** it unnecessary for **us** to consider if dismissals were appropriate under the **circumstances**.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1978.