

CEH

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22635
Docket Number CL-21987

Dana E. Eischeu, Referee

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM: Claim of time System **Committee** of the Brotherhood
GL-8314, that:

"1) **Carrier** violated the Clerks' Rules **Agreement** at Milwaukee, Wisconsin on December **31, 1975** when it arbitrarily **dismissed employee** William P. **Ciesinski** from service without affording him a fair and **impartial** investigation.

2) Carrier shall now be required to restore **William P. Ciesinski** on his **regularly** assigned position, with all **rights** unimpaired and **compensate** him for all time lost **and** all expenses he incurred in his defense to **commence January 1, 1976** and continue **until** he is restored to service."

OPINION OF BOARD: **Following** due notice, and a hearing Claimant was **found guilty and dismissed from service effective** December **31, 1975** on the following charge:

"1. Stealing **Company property** consisting of pipe fittings on December **9, 1975**, at **approximately 3:30 p.m.**"

During appeal on the property the parties settled upon the reinstatement of **Claimant** on a "leniency basis" effective **February 17, 1976** without prejudice to **processing** of the instant claim. **Thus, if arguendo** the claims were sustained **damages** would be limited to the period **January 1, 1976 - February 16, 1976** when **Claimant** was held out of service.

After carefully reviewing the **file** however, we find no reason to set aside Carrier's conclusions **regarding** Claimants culpability.

The evidence of record overwhelmingly establishes that he was leaving the property in possession of pipe unions of a type and brand used by Carrier and not sold by Sears where he claims he purchased the **fittings** and unions in question. Although the evidence against him was circumstantial it was substantial nonetheless. See **Award 20781**. We cannot conclude that Carrier abused its discretion in concluding from the **record of** investigation that Claimant was **guilty as charged**.

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 30th day of November 1979.

