

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23085
Docket Number W-23294

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Consolidated Pail Corporation)

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

(1) The dismissal of Truck Driver **Jacobowsky Johnson** for alleged theft of gasoline from Conrail Vehicle G-8051waa without just **and** sufficient cause and wholly disproportionate to such **offense** (System Docket No; 483).

(2) **Claimant Jacobowsky Johnson** shall be reinstated with seniority and **vacation** rights **unimpaired** and be compensated for all wage loss suffered."

OPINION OF BOARD: **Claimant** had been in Carrier's service about four (4) years. At the **time** of the occurrence giving rise to the dispute herein, he was assigned as a truck driver, with tour of duty **7:00** A.M.-3:00 P.M., rest days Saturday and Sunday.

According to the Carder, at approximately **9:30 P.M.**, Sunday, JUN 10, 1979, **Claimant was** apprehended by a U. S. **Park** Police Officer siphoning gasoline from a Conrail truck at the Ash Track at Carrier's **Benning** Yard. Claimant was removed from the **service** and notified on June 14, **1979** to attend a trial on June 21, 1979 in **connection** with the charge:

'Theft of gasoline from Conrail vehicle G-8051 on June 10, 1979 at approximately **9:30** P.M. at the Ash Track of **Benning** Yard."

Following the trial, Claimant was notified **on** July **13**, 1979 that he was dismissed **in** all capacities.

A copy of the transcript of the trial, or investigation, has been made a part of the record. We have carefully reviewed the transcript and find that none of **Claimant's** substantive procedural rights **was** violated. There was substantial evidence in support of the charge. While there were **conflicts** between the statement of Claimant and other witnesses, **it** is not the function of this Board to weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

There is no **proper basis** for **this** Board to interfere with the discipline imposed. The Carrier is not required to retain in **its service** an **employee** who **is** dishonest.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.

