

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23291
Docket Number MW-23472

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 **Trackman George E. Edwards** was without just and sufficient **cause** (System Docket 397).

(2) **Trackman George E. Edwards** shall be returned to service without loss of seniority, with vacation **and** all other rights and privileges unimpaired, **and** be **compensated** for wages lost during the period of dismissal."

OPINION OF BOARD: The record shows that **claimant** entered **Carrier's** service as a **trackman** on September 20, 1976. **He was** furloughed on January 7, 1977, and returned to service on June 19, 1978. During the time that claimant was furloughed, the Carrier learned that he had been arrested on October 1, 1977, and charged **with** deceptive false **identification** and forging a check of another employe of the **Carrier**. Claimant was subsequently **found** guilty of these charges on May 19, 1978, in Criminal Court.

Upon claimant's return **from** furlough on June 19, 1978, he **was** immediately removed from service and given a notice to attend trial on June 26, 1978 **on** the charge:

"**ashed** Conrail Payroll Check No. D-3239950 dated February 8, 1977 payable to **D. C. Toney, Employe No. 113744**, which **disappeared from** office of Assistant Production Engineer W. H. **Broughton, Hawthorne Yard, Indianapolis, Indiana, on or about February 8, 1977.**"

The trial was held as scheduled. Claimant was present throughout the trial and was represented by the District Chairman of the **Organization**. A copy of the transcript of the trial has been a part of the record. **Following** the trial, or investigation, claimant **was dismissed from** service by notice dated July 11, 1978.

In the trial, or investigation, Criminal Court records were introduced showing that claimant had been found guilty as charged; received a two to fourteen year **suspended** sentence, except 37 days served in jail; ordered to **make** restitution of \$351.00 and court costs in ninety days.

In the **trial**, or Investigation, conducted by the Carrier, the **claimant** did not deny **having** cashed the check issued in favor of another Conrail **employee**. **The employee** for whom the check was issued stated that he did not receive a **payroll** check on February 8 or 9, 1977, and that he authorized no **one** except the Track Supervisor to pick up his pay check. The record also **shows** that the last payroll check issued to the **claimant** was dated January 25, 1977, and showed a bank **endorsement** of January 26, 1977. The last expense check for **claimant** was dated January 19, 1977, and also showed a bank **endorsement** of January 27, 1977.

Based upon the entire record, the Board **finds** substantial evidence in support of the **charge** against the claimant. While there were conflicts in the **testimony** adduced at the investigation, or trial, it is well settled that this **Board** will not **weigh** evidence, attempt to resolve conflicts therein, or **pass** upon the credibility of **witnesses**. Dismissal from **service** is not unusual **discipline** in a case of this kind. The claim will be denied.

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 May 1981.