

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23931
Docket Number MW-23773

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Western Pacific Railroad Company)

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

(1) The dismissal of Foreman S. R. Diaz was without just and sufficient cause, harsh and wholly disproportionate to the charges leveled against him (Carrier's File GM Case No. 11851-1979-BMWE, Local Case No. 278).

(2) Foreman S. R. Diaz shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant S. R. Diaz, a Foreman, MS served with a Notice of Investigation on April 5, 1979 "to determine facts ad place your responsibility for your alleged pilfering for your private use, certain amounts of (the Carrier's) fuel and oil". -- Claimant was dismissed on April 15, 1979.

Examination of the record before the Board establishes that Claimant had a fair and impartial hearing. Claimant admitted taking five gallons of gasoline from the Carrier, and a number of witnesses stated that they had seen him take Carrier's materials. There was substantial evidence in the record to sustain the Carrier's decision to discipline Claimant. Dismissal is an appropriate penalty for theft.

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: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June 1981.

