

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24117
Docket Number m-24142

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Soo Line Railroad Company

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

(1) The dismissal of Machine Operator-Helper J. L. Zeltinger was excessive and wholly disproportionate to the charge leveled against him (Carrier's File 800-16-B-63).

(2) **The** claimant shall be reinstated as a section laborer with seniority and all other rights as such unimpaired."

OPINION OF BOARD: Claimant entered service of Carrier on August 6, 1970. From that date until September 12, 1979 (minus several periods of time when he quit to go to school or when he was furloughed) Claimant worked, inter alia, as a section laborer, timekeeper, helper and relief operator for a brushcutter. Because the nature of the work of a brushcutter helper and relief operator required him to live away from his home or from headquarters point during the week Claimant was, therefore, entitled to reimbursement for the cost of meals and lodging in accordance with Rule 16(b)(2) of the Agreement between the parties. Rule 16 reads, in pertinent part:

"(b) Employees while away from their regular outfit or regular headquarters by **direction** of the Carrier will be **reimbursed** for cost of meals and lodging as follows:

(2) **Other** employees, including those covered by Rule 17, shall be reimbursed for the actual cost of lodging and meals, except **that** this shall not apply on the first day to the mid-day lunch **customarily** carried, nor shall it apply **to** employees traveling in exercise of their seniority rights."

On September 12, 1979 Claimant was held out of service by the **Roadmaster** for allegedly falsifying his expense account. Claimant requested a hearing which was held on September 21, 1979. As a result of this investigation Claimant was notified on September 28, 1979 by Carrier that he had been found guilty as charged and that he was dismissed from service.

A review of the transcript of the investigation shows that sufficient substantial evidence is present to lead a reasonable mind to conclude that Claimant is guilty as charged. It only remains, therefore, to determine if the penalty imposed by Carrier is appropriate. **There** have been **numerous** Awards by this Board in the past **which** have pointed out that **dishonesty and** theft are matters of serious concern in the railroad industry and that this Board will not

substitute its own **judgment** for that of a Carrier when such acts are proven to be true (Second **Division** No. 1850; Third Division Nos. 2646, 2696 and 8717). Given the incontrovertible facts of this case as they relate to these issues, this Board will not disturb this tradition.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

