

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24162  
Docket Number SG-24074

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation:

NEC-BRS-SD-12D - Appeal or the dismissal of H. Campos, Assistant Signalman, New York, NY."

OPINION OF BOARD: Claimant, an employe of the Carrier for three years, was caught by Carrier police officers siphoning gasoline from a company truck into his own personal automobile. The police officers had been on a special "stake out" of the company vehicle as it reportedly contained \$400 to \$500 worth of copper wire. When apprehended, the Claimant admitted he had stuck a length of rubber hose into the gas tank of the company truck and that he had tried to siphon gasoline from the truck into his own personal vehicle. He signed a statement to this effect, and, at the same time, stated that he had also removed gasoline from company vehicles in this manner on two prior occasions.

After a fair and impartial trial at which all the parties had an opportunity to present their respective versions of the incident, Claimant was dismissed from all service of the Carrier.

Among the arguments in this dispute, the Organization has contended that although the police officers read and explained to Claimant his rights under the "Miranda Warning", it was a violation of Claimant's rights under the collective bargaining agreement for Claimant not to have been informed that he had a right "to have a representative present when he was required to make a statement." We do not agree. There is no provision in the Rules Agreement which so requires the Carrier to advise an employe he has the right to have a representative of the Organization present prior to making a statement in connection with any matter that may eventuate in the application of discipline. The Rule referenced by the Organization merely states that if an employe desires to be represented, he may be represented by the duly accredited representative as that term is defined in the Agreement. It places no obligation upon the Carrier to remind or inform employe of those provisions of the Agreement. Accordingly, we find no agreement rights or personal rights were violated by the Carrier's actions in the manner they handled Claimant's admission of guilt.

We likewise do not find any valid reason for mitigating the discipline on the basis of Organization arguments Claimant had "cooperated" with the police in readily giving a statement after he was apprehended, or that the total amount of gasoline Claimant took was of nominal value. Undoubtedly, the Claimant's ready admission came from the fact that he had been observed and caught in the dishonest act by two police officers. And, certainly, it is not the dollar value of the theft, but the nature of the incident that is before us.

The Claimant having openly admitted his guilt to converting to his own personal use the property of the Carrier, and there being no showing that Claimant has been denied due process or that he has been treated in an unreasonable or discriminatory manner, the Board has no alternative but to support the Carrier's decision relative to the extent of the discipline imposed. The fact the probability exists that Claimant now realizes the seriousness of his actions is immaterial since they represented a deliberate intent to defraud the Carrier. We do not perceive them, as the Organization suggests, as having been a momentary or thoughtless act of dishonesty because of personal financial hardships.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of February 1983.

