

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24345
Docket Number hw-24218

Edward L. **Sumtrup**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast Line Railroad Company

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

(1) **The** dismissal of Cook J. A. Little for alleged violation of 'Rule **18**' was capricious, arbitrary, without **just** and sufficient cause and on the basis of unproven charges (System File C-4(**13**)-JAL/12-39(80-22)H).

(2) Cook J. A. Little shall be **reinstated** with seniority and all other rights unimpaired, his **record** be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, Mr. J. A. **Little**, was employed by the Carrier approximately 10 years **prior** to the incident. By letter dated January 28, 1980 **Claimant** received notice **from** the Carrier to attend a formal investigation on February 6, 1980. **He** was charged with alleged violation of that part of Carrier General Rule 18 which reads, in pertinent part, that "... **dishonesty ... immorality ... making false statements . . . will** subject the **offender to dismissal**". After **postponement**, the hearing was held on February 13, 1980. As a result of this hearing **Claimant** received notice, dated February 22, 1980 that he was dismissed **from** service.

A **review** of the transcript of the hearing and other supporting materials presented to this Board **show** that Claimant was absent from his assignment on January 21, 1980. The alleged reason for this absence was **Claimant's** appearance in **court** at the **Richmond** County Courthouse to resolve an issue related to his **home** having been allegedly robbed on **January 18, 1980**. A written stat-t to that effect was presented to the **Carrier** by the Claimant at about **6:30PM** on January 21, 1980. The basis for Carrier's charge against Claimant is that this statement does not represent a true version of the facts.

The transcript of the hearing and supporting documents, particularly the one dated January 22, 1980 **from** the office of the Sheriff of Richmond County, **Rockingham**, North Carolina show sufficient substantial evidence to be present to warrant the conclusion that Claimant is guilty as charged. And substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (**Consol. Ed. Co. vs. Labor Board 305 U.S. 197, 229**). There is no record of a robbery having been reported prior to January 21, 1980 which would have necessitated an appearance in **court** by the Claimant on that day. Further, no one was found who could testify that Claimant had recovered stolen goods **from** the courthouse on that **same** January 21, 1980. Indeed, the Sheriff's officer **whom** Claimant testifies that he notified of the theft of his personal possessions **on** January 19, 1980 could not even **remember** having had discourse with the Claimant on that day, much less having filled out a written report which is custom. In the absence of any other supporting evidence.

therefore, this Board concludes that the Carrier has met the burden of proving the charge raised against the Claimant. Upon the total record before **it**, therefore, this Board finds no justification for disturbing discipline assessed by the Carrier. The Claimant received a fair hearing whereby substantial evidence established a violation of Rule 18 in pertinent part and the discipline assessed has not been shown to be arbitrary, unreasonable nor capricious.

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 27th day of April 1983.

