

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24367**
Docket Number **MW-24351**

Edward M. Hogan, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way **Employees**
{ Consolidated Rail Corporation (former **Penn Central**
{ Transportation Company)

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

(1) **The** dismissal of **Trackman** Gary L. Dobbs for alleged '**Removal** and possession of contents (eleven **one-litre** "Old Thompson" whiskey bottles) from Trailer **RLNZ 200288**' on May **14, 1980** was without **just** and sufficient **cause**, on the basis of **unproven** charges and **in** violation of the **Agreement** (System **Docket No. 587**).

(2) **Trackman** Gary **L.** Dobbs 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 was dismissed **from** the service of the Carrier **following** a formal investigation **on** the charges of theft of eleven bottles of whiskey. the contents **of** a **consigned** shipment. **The** Claimant raises the issue *that* the charges brought at the investigation were unproven. It is a well-settled principle of this Board that the trier-of-fact is not this Board; rather it is the hearing officer who is able **to** be present at the giving of **testimony**, hear the facts **as** adduced at the hearing and **witness firsthand** the demeanor and physical presence of witnesses in the matter. It is also **well-**established that this Board will not upset the findings **of** fact as determined at a duly **constituted** and fair **hearing**, absent evidence of arbitrary or capricious conduct or abusive or **discriminatory** behavior **on the** part of the hearing officer.

We **find no** such **conduct** here. We do find **ample** and substantial evidence throughout the record **to** substantiate the **findings** as resulted **from** the **investigation**.

Finally, we find that the measure of discipline should be upheld in this case. **Theft** is a **serious** offense. Numerous awards **of** this Board so **state**, see Award **24062**

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 **13th day of May 1983.**

