

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24591
Docket Number MW-24735

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Washington Terminal Company

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

(1) The his missal of Carpenter J. W. Curtis, Jr. for violation of
"Rule L" was excessive and disproportionate to the charge leveled against him.

(2) The claimant shall be reinstated with seniority and all other
rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: On September 14, 1981, L. A. Phillips, Engineer, addressed
the following to Claimant:

"You are hereby ordered to appear for a Hearing
on Tuesday, September 22, 1981, at 9:30 a.m., in
the Hearing Room of The Washington Terminal Company,
Union Station, Washington, D.C., on the following
charge:

'Violation of Washington Terminal General
Rule "L", Paragraph (3): "Unauthorized
possession, removal or disposal of any
material from Company property is prohibited."
When on September 11, 1981, about 4:30 p.m.,
at the "F" Street window of the Mail
House restroom, a U.S. Capitol Policeman
observed your unauthorized possession,
removal and disposal of material from the
W. T. Company property.

Material -

1. One (1) bundle of hand towels
2. Three (3) gallons of cleaning fluid
3. One (1) shopping bag containing
miscellaneous items. "

Claimant failed to appear for the hearing on the date set and on the request of his representative hearing was postponed until September 29, 1981. At the hearing Claimant was represented by Nancy DiStefano, District Chairman of the Brotherhood.

During the hearing Claimant admitted guilt of the charge and stated he placed the material in the car which transported him from his work to his home. He added further his intention to use the material in his home for his personal benefit. He did not obtain permission for taking the material from Company property from anyone in authority. He was an employe of some eight years service, certainly sufficient experience to understand talking to another employe about such a matter was nor the kind of authority required. His act in placing the material outside the company building and hiding it in the bushes until his ride came by proves his intent to remove the property from company premises.

His prior record includes five instances of disciplinary action over the eight years of his employment. In 1976 he was dismissed for insubordination and restored as a result of an appeal by the Brotherhood. During the next three years he was suspended for various periods from 7 to 30 days for excessive absence and tardiness from work. During 1979 he was suspended for 20 days for being disorderly and using profanity in the presence of passengers. All in all, not a good record and understandably causing the Carrier to reach the conclusion that the theft admitted in this case fully justified his dismissal. Claimant received a fair and impartial hearing as required by Rule No. 5 of the labor agreement and was actively represented by the Brotherhood at both the hearing and on later appeals. We do not find the disciplinary action capricious or arbitrary. The evidence supports a finding that dismissal was reasonable and for just cause.

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 Employes involved in this dispute are respectively Carrier and Employe 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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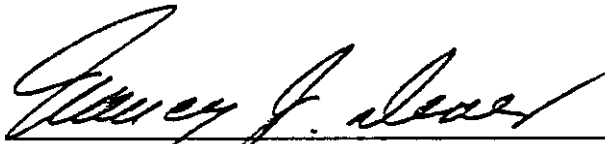
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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