

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 24659
Docket Number SG-25121

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company:

1a) Carrier violated the May 1, 1964, Signalmen's Agreement, as amended, particularly Rule **700(a)** when on June 14, 1982, Supervisor of Signals and Communications, R. L. **Barger**, removed Mr. Ford **from** service account of his alleged removal of a propane bottle from the property without authority.

Claimant should be reinstated to his former position at Little Rock, Arkansas and be made whole for all lost wages and benefits since June 15, 1982.

OPINION OF BOARD: The Brotherhood's contention that Rule **700(a)** was violated is **based** on action by Carrier in taking Claimant out of service on June 14, 1982, prior to the investigation hearing held on June 22, 1982. This contention overlooks the provisions of Rule 700(b) which provides that an **employee** may be held out of service in proper cases pending investigation.

In this case Claimant was charged for removal of a propane kit from the property without proper authority. **Evidence** indicated theft of company property for personal use, a most serious charge. Preliminary evidence available to the supervisor who took Claimant out of service supported such action. He was advised by a signal technician who witnessed Claimant carry the propane kit, partially concealed under his raincoat and place it in his truck which was parked **near** a company building.

Claimant received proper notice of the hearing and both he and his representative participated therein. Transcript shows no action to support a charge that it was not conducted in a fair and impartial manner.

The dismissal action was taken by Carrier on June 23, 1982. Claim to restore Claimant to service was made on August 6, 1982. The claim was handled through the usual channels of appeal up to and including the highest officer of the Carrier designated to handle such **matters**. In the course of various appeal conferences the Carrier offered to restore Claimant to service on a leniency basis provided Claim was withdrawn. These conditions were declined. **Claimant** was finally restored to service, however. Carrier's letter of April 6, 1983, stated that the "discipline has served its **purpose...and** we will arrange to reinstate Claimant to service but without pay for time **lost**".

The evidence on which Carrier acted was twofold: First, an inventory showed the propane kit missing from the proper storage place; secondly, an eye witness testified he saw Claimant carry the missing item partially concealed by his raincoat **and** place it in his jeep which was parked near the building. Against this positive evidence we have Claimant's denial, not an unexpected statement from the person accused of misappropriating the item. The most reliable evidence short of confession is an eye witness account of the misdeed. **In** the circumstances the evidence on which Carrier acted impresses us as substantial and the determination of guilt clearly supportable. We cannot disagree with the Carrier position that dishonesty as evidenced by theft of company material is a dismissable offense. True, in this case, the amount involved was small but the principle remains.

There are countless awards of this Board supporting **dismissal** for theft of company material. It is a betrayal of the basic trust which a company must place in its employees. When they are found to have betrayed that trust dismissal is the logical consequence. The principle is well articulated in Award 21624 by Referee Roukis as follows:

"Pilferage from property entrusted to railroads for shipment is the bane of the transportation industry. The impact of distrust on this mode of transport is severely detrimental to both employees whose livelihood is derived from the patronage of shippers, as well as their employers. The seriousness of such actions cannot be minimized. In view of the seriousness of the occurrence and the relatively **short** employment of the claimants, the discipline as assessed was not excessive or capricious. There are no mitigating circumstances present in this case to warrant questioning the discipline imposed upon the claimants. The Board will not substitute its judgment for that of the Carrier in this matter.0

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 **Employee** 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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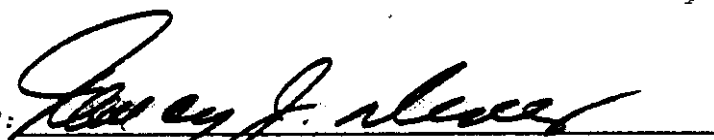
Page 3

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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~~ 30th day of January, 1984