

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24767
Docket Number SG-24172

John B. LaRocco, Referee

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the **Chicago** and North Western Transportation Company:

(a) On July 28, 1980, the carrier violated the **current** Signalmen's Agreement, as amended, in particular revised Rule 60 when Mr. T. Lavizzo was taken out of service by Division Signal **Suprv.** Mr. R. **Benston**, and given a hand written letter and I quote: "your responsibility in connection with the theft of tools" etc.

(b) The carrier now **be** required to compensate Mr. Lavizzo for all time lost, clear his personal service record and put Mr. Lavizzo back to work.

OPINION OF BOARD: Leading Signal Maintainer Fawn discovered seven personal tools missing from his locker at Lake Street on July 7, 1980. Two **weeks** later, the District Signal Foreman was assisting Claimant with some signal trouble at Kedzie Avenue. When the Foreman borrowed some pliers from Claimant, he recognized the pliers and was positive that the pliers belonged to Signal Maintainer Fawn. Subsequently, the Division Signal Supervisor, a Special Agent and Signal Maintainer Fawn confronted Claimant. They found Claimant in possession of the pliers as **well** as two other tools which Fawn said **were** taken from his locker. Claimant contended that he owned all the tools. However, when Fawn pointed out that his first name and initials **were** etched on the pliers, Claimant said he must have inadvertently picked up Fawn's pliers when he was at Lake Street on July 6, 1980. Claimant adamantly emphasized that he was the true owner of the other two tools which Fawn identified as **among** the tools missing from his locker.

Claimant was withheld from service pending a Rule 60 investigation. Though the Organization raised several objections during the July 28, 1980 investigation, we have carefully **reviewed** the record and we conclude that Claimant received a fair and impartial investigation. The Organization **vigorously** defended Claimant and had ample opportunity to present all pertinent evidence. In addition, due to the seriousness of the charged offense, the Carrier could reasonably decide to remove Claimant from service pending the investigation. Third Division Award No. 22085 (Marx).

The issue presented to this **Board** is whether or not the Carrier has presented substantial evidence that Claimant took and converted to his own use tools which rightfully belonged to a fellow employee. Signal Maintainer Fawn positively identified three of the tools in Claimant's possession as among those tools missing from his locker. Fawn's identification of two of the three tools was corroborated by the District Signal Foreman who had often borrowed Fawn's tools in the past. Fawn, without a doubt, was the true owner of the pliers.

There are rarely any eyewitnesses to an actual theft because, the very nature of the offense, it is committed furtively and secretly. Numerous decisions of this Board have held that the unauthorized possession of personal property belonging to another person raises an inference that the property was stolen. Second Division Award No. 8342 (Marx). In this case, Claimant was not only found with a **co-worker's** pliers, but he also admits that he was at Lake Street during the **period** that the tools were taken from the locker. Claimant's excuse that he mistakenly picked up Fawn's pliers instead of his own is inherently implausible. If Claimant mistakenly took Fawn's plier from Lake Street, Claimant must have left his own pliers there. Yet, nobody reported finding pliers at Lake Street shortly after July 6, 1980. Thus, the Carrier could decide to attach more weight to the testimony given by the Signal Maintainer and the Signal Foreman as opposed to Claimant's inconsistent denials. Third Division Award No. 19735 (**Roadley**). Based on the solid inferences arising from all the surrounding circumstances, the Carrier has sustained its burden of proof.

Taking the personal property of a co-worker which has been stored for safekeeping in the Carrier's facility is a grave offense warranting severe discipline. **Employees** must be able to trust each other and when that trust is breached, it becomes impossible for the employees to maintain a harmonious working relationship. Therefore, due to the seriousness of the proven offense, we will affirm the assessed discipline.

FINDINGS: The Third Division of the Adjustment Board, after **giving** the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds.

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


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984

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