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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25037
Docket Number CL-25066

M. David Vaughn, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Seacoast Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood IGL-97611
that:

1. Subsequent to investigation held on March 26, 1982, Carrier violated the Agreement when it acted arbitrarily, capriciously and in a discriminatory manner when it dismissed Mr. Paul Lindsey from service.

2. Carrier shall restore Claimant to service with all his rights **and** privileges unimpaired, plus compensation for all lost wages due to Carrier's action.

OPINION OF BOARD: Claimant Paul Lindsey was employed as a Truck Operator by Seacoast Transportation Company, a subsidiary of the Carrier's predecessor company, the Seaboard Coast Line Railroad, whose Agreements and **employees** the Carrier assumed through merger. Claimant operated a Piggy Packer, a machine which **onloads** and offloads truck trailers from piggy back cars, at the Carrier's TOFC ramp in Miami, Florida.

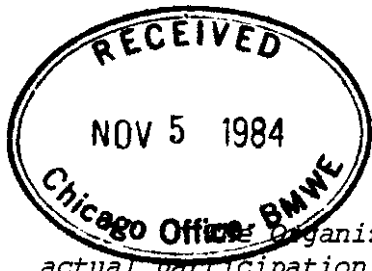
On September 28 or 29, 1981, Claimant offloaded and spotted a trailer loaded with television sets which was subsequently stolen. Several persons, including some **employees** of the Carrier, were subsequently arrested for the theft. Claimant received \$300 from **one** of the individuals involved in the theft for spotting the trailer and for "keeping his mouth shut" about the incident.

The Carrier conducted **an** investigatory hearing with respect to Claimant's role, if any, in the incident. It notified Claimant that the investigation would be in connection with:

"The unauthorized removal and theft of trailer MPZZ 200829 on September 28 or 29, 1981, in violation of Rule 12 (b) Theft."

and with Rules governing disloyalty, dishonesty, endangering property, making false statements, and concealing facts concerning matters under investigation. At the conclusion of the investigation, the Carrier dismissed Claimant for violation of Rule 12 (a), (b), (c), (k), (m) and (n). This claim followed.

The Organization argues that the Carrier's action should be overturned because the notice of the investigation was not sufficiently specific. The Board disagrees. The notice was clear and was certainly of sufficient specificity to allow Claimant and his representatives to prepare and present his defense. The Organization fails in any event to cite any prejudice to Claimant's position which resulted from the notice. Under such circumstances, the notice does not constitute grounds to set aside the Carrier's action.



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Organization asserts that the Carrier did not prove Claimant's actual participation in the theft. This Board expresses no conclusion with respect to the disposition of any criminal charges which may have resulted from the incident. Neither was the Carrier functioning as a court of law in investigating the incident and determining at its conclusion to dismiss Claimant. However, based upon the record as a whole and all the evidence, the Board concludes that there was substantial evidence to support the Carrier's decision and that the dismissal of Claimant was not arbitrary, capricious, discriminatory or an abuse of discretion. Accordingly, this Board on review will not substitute its judgment for that of the Carrier and overturn the decision. Such limited review is supported by clear NRAB authority. See Third Division Award 14601. The claim will be denied.

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 Employes 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.