

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25041
Docket Number MW-25240

M. David Vaughn, Referee

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

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

(1) The **dismissal** of **Trackman** N. B. Marshall for violation of 'Rule N' 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: Claimant N. B. Marshall was employed by the Carrier as a **Trackman**. He was dismissed from service for violation of Carrier's General Rule N, following investigation of an incident which occurred on March 2, 1982 in which Claimant stole, and admitted stealing, property belonging to a passenger in the value of \$500-\$800. Rule N states in relevant part:

"**Employees** must be of good moral character and must conduct themselves at all times, whether on or off Company property, in such manner as not to bring discredit upon the Company. Stealing ... participating in any illegal, dishonest, or immoral activity . . . participating in an unauthorized or unnecessary activity, while on duty or while on Company property, is prohibited."

Claimant admitted violating the Rule; and the record clearly supports the existence of such a violation,

Claimant was in the Carrier's service for approximately three and one-half years, during which time he received one reprimand and five suspensions for various infractions including insubordination, absenteeism and sleeping on duty, prior to his Rule N violation.

Theft by **employees** is a serious offense and frequently results in dismissal. See Third Division Awards 21323, 22119 and 24567. Theft of the property of members of the public using the facilities of the Carrier is, if anything, less to be tolerated by the system than other kinds of stealing, since such conduct injures the Carrier's reputation with the public, interferes with the Carrier's obligations to the public and exposes the Carrier to liability from those persons harmed. Claimant's conduct here was knowing and willful, and the property stolen was of substantial value. Claimant's prior record, while containing no prior discipline for violation of Rule N, indicates that Claimant has been unable to comply with a variety of reasonable rules which are necessary for the Carrier to conduct its operations and to protect the safety and order of the workplace.

The Organization argues that Claimant's disciplinary record was improperly introduced into the record of the investigation. The Board would agree that records of prior offenses are not admissible in an investigatory hearing to establish the guilt of an employee. However, the Claimant's record was introduced into the transcript of the investigatory hearing for the limited purpose of assessing the severity of the penalty to be imposed; and there is no indication from the record that it was used for any other purpose. Under the circumstances, such use does not violate Claimant's right to a fair and impartial hearing and does not, therefore constitute grounds to overturn the Carrier's action.

The Organization also asserts that Claimant has a "drinking problem" which explains his action in taking the passenger's property and should mitigate the penalty of dismissal. It is true that alcoholism sometimes contributes to bizarre behavior and that an alcoholic **employee** who obtains and completes treatment for his condition may, under some circumstances, be entitled to leniency for offenses committed as a result of his condition. Such leniency may be warranted, even though it is also well established that participating in such treatment is not an excuse for otherwise disciplinable conduct.

There is, however, nothing in the record here to support such consideration. The record does not support the assertion that Claimant was drinking or intoxicated at the time he stole the property. The record does not support the proposition that Claimant was a problem drinker, nor does it establish that Claimant had ever sought, let alone received, assistance or treatment for his asserted problem. There is no evidence that he had ever been diagnosed to have such a problem. In short, drinking simply cannot be deemed to have been a factor in Claimant's conduct or a mitigating factor in the penalty assessed.

For the reasons indicated and based upon the entire record, the claim must 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 **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

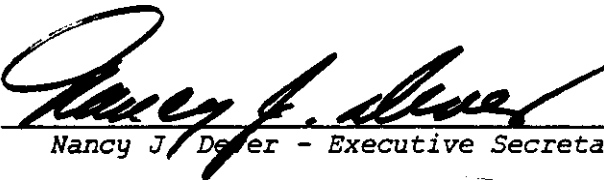
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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. Dever - Executive Secretary

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