

-NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25603
Docket Number MW-25927

John W. Gaines, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (**Consolidated** Rail Corporation

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

(1) The dismissal of B&B Foreman D. R. Cimarolli for alleged "Theft of Conrail property at Mingo Jct., Ohio on Wednesday, August 31, 1983, at 2:58 P.M.. was excessive and unwarranted (System Docket CR-362-D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be accorded the benefits prescribed in Agreement Rule 27, Section 4.

OPINION OF BOARD: Carrier by notice of September 8, 1983, instructed Claimant to attend a hearing concerning allegations of theft on August 31, 1983, of Carrier's lumber.

The record shows convincing elements of the act of theft in the Claimant's 1) Removal of lumber from the Carpenter Shop on the site of Carrier's property, 2) Loading of the lumber onto his private truck for transportation from the site, and 3) Operation of the truck driving it away, so loaded, from the loading site.

Carrier introduced substantial evidence, by Conrail Police Record and by Police testimony, of the existence of these witnessed elements of theft, and Claimant's testimony admits to them all, at least in general.

Individuals such as Claimant are presumed to have intended the natural consequences of their action, and the presence of an intent of a dishonest nature may reasonably be inferred in Claimant from the foregoing.

At the hearing there was disputed testimony as to lumber, which was taken, being valueless property or not. It had value enough for Claimant to want it as a permanent installation in his private residence, and also enough monetary value in the pieces so "borrowed" that he testified "...they were going to be replaced the next pay". The value to Carrier was enough for it to have the site placed under surveillance for lumber which an informant reported to be disappearing therefrom, and for Carrier to conduct an oral hearing to investigate the loss.

Despite implication to the contrary in questions being put to Claimant on cross examination, he left no impression of contemplating the lumber as being anything borrowed in the sense of some returnable movable fixture. The appropriation of the Employer's property to his own use here was with the Claimant's specific intention to incorporate it as a permanent appurtenance or fixture in the porch steps of his residence, according to his testimony.

We, therefore, find the discipline imposed here not to be excessive and unwarranted, despite the Organization's assertion to the contrary. Not only is dishonesty a matter of serious concern in the Railroad Industry, but also it frequently results in dismissal from the service of a Carrier. We will deny the claim.

The Organization appears to have dropped its claim advanced at the hearing that the trial was unfair and partial to Carrier by reason that the unidentified informant giving rise to the later surveillance was not called in as a testifying witness. Mutually, the Organization and Carrier have laid to rest their discussion on leniency being an inappropriate subject here and not at all material to the matters being considered.

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 22nd day of August 1985.