

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26158

Docket Number MW-26569

J. R. Johnson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Kansas City Southern Railway Company (Milwaukee-
(Kansas City Southern Joint Agency)

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

(1) The dismissal of Section Laborer K. R. Sorenson for alleged 'violations of General Rules B, D, N, O and 618 of Rules and Regulations for Maintenance of Way and Signal Department' was without just and sufficient cause and on the basis of unproven charges (Carrier's File 013.31-307).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed by the Carrier as a Trackman, and part of his duties included the purchase of materials and parts to repair Carrier vehicles and equipment. In the Fall of 1984, the Carrier became aware of substantial misuse of Company credit, material and time, and charged the Claimant and several others with the violation of several Carrier Rules. An Investigation was held on September 26, 1984, and Claimant was terminated as a result of the Investigation.

The record reveals that several Carrier Officers were involved in the thefts, and the Organization raises as its main defense that the Claimant was merely "following orders." There is no dispute that Claimant falsified documents, personally used the Carrier's credit to buy material, and performed a variety of personal services for Company Officers on Company time. He admits that he knew what was going on, and that it was wrong. His sole defense is that he was "following orders."

He was asked repeatedly why he did not report the wrongdoing to higher Management Officers or his Union Representatives, and he replied that he did "not know." The other offenders either resigned or were terminated.

The Board does not agree with the Organization's defense. The Claimant knowingly participated in defrauding the Carrier on many occasions, over a period of several months. He was not in peril of physical danger, and he had a responsibility to follow the Rules and protect the credit and property of his employer. Each fraudulent transaction damaged the trust of the Claimant, and the Board has held many times that a Carrier should not be required to employ personnel which it cannot trust.

The Board finds that the Claimant was guilty of the charges, that the offenses were serious in nature, and that the discipline assessed was appropriate. We will deny the Claim.

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;

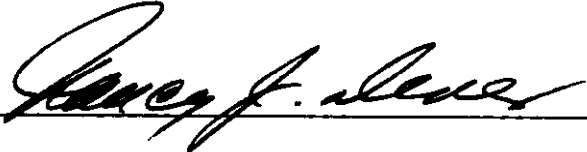
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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 29th day of September 1986.