

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26444
Docket Number X-26755

James R. Johnson, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Long Island Rail Road Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road company:

0" behalf of Assistant Signalman R. Standinger, Jr., for reinstatement to service account of being dismissed from service by the Carrier on September 3, 1985. Carrier File: DISCIPLINE (Standinger)."

OPINION OF BOARD: Claimant was employed as a Signal Helper, and had more than nineteen years service at the time of his discharge. On **May** 28, 1985, Claimant and another employe were observed removing several pieces of lumber from Carrier's property, and transporting the lumber to the home of their Foreman.

On June 3, 1985, Claimant reported to the Signal Supervisor, and presented him with a written statement, in which he confessed to having transported Company material to his Foreman's home on 24 occasions over the previous eighteen months. He admitted that he knew his **actions** were wrong, and that he was helping his Foreman to steal.

Claimant was charged with the falsification of Company documents, including daily vehicle reports and time cards, and with his involvement in the misappropriation of railroad property. The Foreman resigned from the service, and the Claimant and the other involved employe were discharged following separate formal investigations.

The Claimant admits to his complicity in the theft on this and some two dozen other occasions, but asserts that he was merely following the orders of his Foreman, and denies that he received any benefit from the theft. The Organization supports his contention, and points out that the Claimant came forward voluntarily to make his statement, thus enabling the Carrier to solve the crime. It also cites several Awards which overturn discharge when no monetary benefit accrued to the Claimant, and argues that the Claimant was obliged to follow the instructions of his Foreman, and cannot be held **account-**able for his part in the scheme under such circumstances. Finally, it argues that his nineteen years of service should mitigate against the discharge.

The Carrier points out that Claimant's statement came nearly a week after he was observed in the act by its Police, and considering the fact that his role had gone on for eighteen months, the fact that he chose that time to

come forward makes it likely that Claimant knew the end was near. It argues **that** the Claimant's admission that he knew he was stealing negates the value of his "following orders" as a valid excuse, and challenges the defense that Claimant received no monetary reward.

This is not a case where an employee followed an order to perform an act of questionable propriety, exercised poor judgment, and was punished for that error. Here, the Claimant willingly participated in the theft of Company property on two dozen occasions over a period of eighteen months, and his main defense is that he was "following orders" - to steal from his employer.

It is clear that the thefts could have been stopped much earlier if the Claimant had reported his Foreman at the first incident, and the Carrier has a right to expect employees to protect its property. It certainly has no obligation to retain an employee who admits that he participated in multiple thefts of its property.

The Board finds that Claimant admitted his guilt, and that his nineteen years of service does not mitigate two dozen incidents of theft of Carrier property.

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

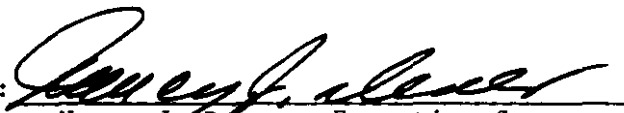
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.