

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26445
Docket Number SG-26756

James R. Johnson, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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:

On behalf of Assistant Signalmen J. A. Sciallo for reinstatement to his position account of being dismissed from service by the Carrier on September 3, 1985. Carrier File: DISCIPLINE (Sciallo)"

OPINION OF BOARD: Claimant was employed as a Signal Helper, and had approximately three years of service at the time of his discharge. On May 28, 1985, Claimant and another employee were observed removing several pieces of lumber from Carrier's property, and transporting the lumber to the home of their Foreman. The facts are recited in greater detail in the companion case, Third Division Award 26444, which dealt with the discharge of the other employee.

Claimant was charged with the falsification of his time card, and with his involvement in misappropriation of railroad property. The Foreman resigned from the service, and the Claimant and the other involved employee were discharged following separate formal investigations.

The Claimant admits to his complicity in the theft on this and other instances, but asserts the same defense as the Claimant in the prior case: that he was merely "following orders." In addition, the Organization raises a procedural objection, asserting that the fact that the Hearing Officer participated in a pre-trial interview with the witnesses invalidated the subsequent formal investigation, and denied the Claimant to his right to a fair hearing.

The Carrier asserts that such pre-trial sessions are common, and do not compromise the fairness of the investigation, or the Hearing Officer. Although some prior decisions of this Board have held that such a meeting can compromise a Hearing Officer, this Board can find no evidence that supports that conclusion in this case. The transcript of the investigation reveals that the Hearing was held in a fair and impartial manner, and the Hearing Officer gave no indication of unfairness. Therefore, we must find that the pre-trial meeting was not prejudicial to the Claimant's rights.

With respect to the merits of the case, it is clear that Claimant participated in the theft of Carrier's material, that he knew the acts constituted theft, and he took no action to prevent **or** report the matter. The Carrier **has** a right to expect its **employees** to protect its property, and certainly is not obliged to continue the employment of individuals who steal or sanction the stealing of its 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.