

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26703
Docket Number MW-27271

Ronald L. Miller, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
(Northeast Corridor

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

1. The dismissal of Repairman J. Capecci for alleged violation of Rules 'S', 'I' and 'H' was on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-1237D).

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

OPINION OF BOARD: On March 26, 1985, the Claimant signed a statement wherein he admitted to "having pumped about 100 gallons of fuel (oil) into my tank inside my house. . . " and on three (3) prior occasions pumping "about 600 gallons" into that tank. Following a Hearing, the Claimant was dismissed from employment with the Carrier.

There is substantial evidence of probative value upon which to conclude that: (a) the Claimant was not coerced or intimidated to sign the statement of March 26, 1985, (b) he was advised that he could have an Organization representative present when he gave and signed the statement and chose not to have such representation, (c) Organization representation was not required, and (d) the Claimant was guilty as charged.

The discipline of dismissal in this matter of admitted dishonesty and theft of Carrier property is not excessive. The dismissal is commensurate with the circumstances of the thefts and the seriousness of the misconduct.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

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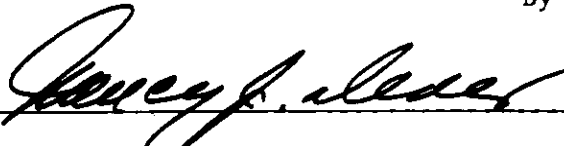
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.