

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29785
Docket No. CL-30397
93-3-92-3-158

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

(Transportation Communications International
(Union

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (formerly
(The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10667) that:

1. The Carrier violated the terms of the General Agreement and Memoranda thereto, when on Tuesday, February 9, 1988, it held investigation on Clerk R. E. Kirchner for responsibility in connection with diversion of cars LN 240679 and SBD 253386 to Richmond, Indiana, on or about October 7, 1987, without proper authority and sale of contents of same on or about October 10, 1987, to a third party at Richmond, Indiana, without authority of CSX for purpose of personal gain with proceeds of unauthorized sale going to themselves, and subsequently by letter signed by D. H. Shepherd dated February 16, 1988, it dismissed Clerk Kirchner from the service of the CSX Transportation; and,
2. The Carrier shall now arrange to reinstate Clerk Kirchner to his position of Industrial Service Clerk, A-247 with all rights restored; and,
3. The Carrier shall now arrange to compensate Clerk Kirchner for any time lost from January 26, 1988, and to continue until the date he is again allowed to perform services under the terms of the Agreement."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant had been employed by Carrier as an Industrial Service Clerk, and was dismissed from service effective February 16, 1988, for diverting two freight cars and selling their contents. The cars contained soybeans worth more than \$39,000. At his disciplinary hearing, Claimant admitted his responsibility for this theft.

The Organization has asserted Carrier has committed procedural violations by not affording Claimant a precise charge, and by the Division Manager denying the first appeal, even though he was not the designated officer to do so. With respect to the first objection, the Organization states the notice of charge did not state the contents of the cars, misidentified one of the two cars involved, and did not name the person to whom Claimant sold the lading. We have reviewed the charge and find that it adequately put Claimant on notice as to the subject matter of the investigation, and was, therefore, proper.

As to the Organization's second objection, we note the officer to whom the appeal was directed was the Hearing Officer at Claimant's Investigation. Carrier substituted the Division Manager as the appeal officer in order to afford Claimant an independent appeal. Under the circumstances, we do not find this to be improper or a violation of the Rule.

The seriousness of Claimant's offense should be unquestioned. We do not find his frankness or the fact that he made restitution to be any basis for mitigation. That occurred only after he was caught. Neither does his twenty-five years of service weigh against such a serious violation. Carrier's decision to dismiss Claimant will not be modified. While it played no part in the Board's decision in this case, we do note that the dismissal of Claimant's accomplice was upheld by Public Law Board No. 5102 (Award 10).

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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin sb
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.