

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30949
Docket No. SG-31493
95-3-93-3-544

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway Signalmen
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of J. R. Gnacinski for reinstatement to service with payment for all lost wages and benefits and with seniority unimpaired and the record of discipline removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it abused its discretion in disciplinary matters and imposed the harsh and excessive penalty of dismissing the Claimant from service on June 5, 1992. Carrier's File No. 79-92--54. General Chairman's File No. S-AV-84, BRS File Case No. 9078-CNW"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On May 28, 1992, Claimant was notified of an Investigation, to be held May 29, 1992 concerning Claimant's responsibility in connection with his alleged taking of Carrier's property and selling it to scrap dealers. The Investigation was postponed to and held on June 2, 1992. On June 5, 1992, Claimant was notified that he had been found guilty and that he was dismissed from service.

Claimant testified that he had 38 years of service at the time of his dismissal. Claimant's record was good and included a commendation a year earlier for detaining a thief from stealing Carrier property.

Claimant, however, took wire from Carrier's poles on several occasions and sold the wire to various scrap dealers. The wire was not in service at the time, but was attached to Carrier's poles and Claimant had no authorization to take it.

Claimant took these actions because of severe personal financial distress, related to his divorce proceedings. When confronted by Carrier, Claimant readily admitted his guilt and cooperated fully. Carrier's Captain of Police testified that he knew Claimant for eleven years and that Claimant's behavior in this incident was out of character and shocked him.

The Board strongly condemns Claimant's actions. Claimant's financial distress cannot excuse so extremely serious an offense as theft. Nevertheless, after a careful review of the record, in view of the unique circumstances of this case, the Board finds that Claimant should be reinstated on a last chance basis. Reinstatement shall be conditioned on Claimant passing a reasonable return-to-duty physical exam. Claimant should consider this Award as a "last chance" and should, in the future, make every effort to be an exemplary employee. Accordingly, the claim will be sustained to the extent that the Claimant shall be restored to service on a last chance basis with seniority and other Agreement benefits unimpaired, but without any compensation for time lost while out of service.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of June 1995.