

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32709
Docket No. MS-32801
98-3-95-3-588**

The Third Division consisted of the regular members and in addition Referee Jonathan S. Liebowitz when award was rendered.

**(R. W. Raymond
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"This dispute involves the dismissal of R. W. Raymond from Consolidated Rail Corporation (System Docket MW-3704-D) on account of assisting in the unauthorized removal for sale of copper traction motor coils from Conrail's Juniata Locomotive Shop Complex. The dismissal included the charge of 'conduct unbecoming a Conrail employee.'

I feel that my past employee record on Conrail indicates that I have been a good, responsible employee. I have twenty-four (24) years of employment with Conrail with no disciplinary record of any sort. I have made restitution to the Carrier for my actions and served a community service sentence from the courts, which has been completed.

I contend that I was dismissed without the Carrier adequately reviewing my prior work and disciplinary records. I have been dismissed since November 11, 1994, which in excess of one (1) year.

I believe that I should be reinstated because I did cooperate with the Carrier and the Conrail police in their investigation of this incident."

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.

The record shows that the Carrier employed the Claimant as a Track Foreman at Altoona, Pennsylvania, until November 11, 1994, when Carrier removed Claimant from service for his part in the theft and resale of electric traction motor coils from the Juniata Storehouse in Juniata, Pennsylvania, having a replacement value greater than \$90,000.00. The record shows that Claimant actively participated in the theft of the coils during a period from April 1994 until October 1994 and that Claimant and his co-conspirators sold the coils at scrap value for which \$9,289.60 was paid. At the investigation, on January 13, 1995, Claimant admitted his participation in the theft of the traction coils.

By Notice of Discipline dated January 31, 1995, Carrier dismissed Claimant from its service in all capacities. The Brotherhood of Maintenance of Way Employees progressed the claim to the Carrier's Senior Director-Labor Relations. Following Carrier's denial of the appeal, Claimant progressed the appeal to this Board on an individual basis. By letter dated July 23, 1995, the Office of the District Attorney of Blair County, Pennsylvania, sent to Carrier a sentencing order, dated July 14, 1995, of the Court of Common Pleas of Blair County pursuant to a plea agreement, sentencing Claimant on a count of criminal conspiracy.

Our review of the Statement of Claim shows that it is a plea for leniency following the Carrier's finding, and Claimant's admission, of theft from the Carrier. There is no question that such an act of dishonesty is a dismissable offense.

The elements of this case are:

- Claimant's admission is a matter of record. See Third Division Award 32004.

- **Theft of Carrier's property constitutes dishonesty and as such is proper grounds for removal. See Third Division Award 21334.**
- **The Statement of Claim constitutes a request for leniency. Such a request is not a proper matter for this Board's discretion. We find that the degree of discipline is consistent with the offense. See Second Division Award 12102.**

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of August 1998.