

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40262
Docket No. SG-40500
10-3-NRAB-00003-080377

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

(Brotherhood of Railroad Signalmen

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of M. S. Litterio, for reinstatement to his former position with payment for all time lost and with all rights and benefits restored and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 57, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on January 23, 2007. Carrier’s File No. BRS(N)-SD-109D. BRS File Case No. 13881-NRPC(N).”

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 Claimant had been employed by the Carrier since 1996. On October 23, 2006, the Claimant was working as a Signalman at Tower "T" Interlocking near South Station in Boston, Massachusetts. The Claimant and another Signalman, who were assigned to remove old cable wire, cut approximately 150 feet of cable and placed it in a Carrier truck. The employees had instructions from their Supervisor to transport the cable to Widett Yard and place it in a scrap dumpster. Instead, they took the cable to a private scrap yard, where the scrap dealer refused to purchase the material, but two other individuals bought it for \$700.00. The local police had the scrap yard under surveillance and observed the sale, after which they arrested the Claimant and the other employee.

Thereafter, the Claimant pled guilty to charges of buying, receiving or aiding in the concealment of stolen or embezzled Carrier property in connection with this incident. On November 13, 2006, the Carrier directed the Claimant to appear for an Investigation on numerous allegations, including theft and/or dishonesty. Following the Investigation, the Carrier found the Claimant guilty of the charges and dismissed him.

We carefully reviewed the record in its entirety. As the Carrier asserts, the undisputed evidence is that the Claimant and the other employee appropriated the cable, which was Carrier property, and sold it for their own benefit. The evidence supports the Carrier's conclusion that the Claimant's protestations that he was an unwitting and unwilling victim of the other employee's scheme were not worthy of belief, especially in light of the Claimant's guilty plea to the criminal offense. Thus, his guilt has been proven by substantial evidence. As for the penalty of dismissal, the Claimant committed extremely serious offenses which went to the heart of his employment relationship with the Carrier. Numerous arbitration panels in this industry support dismissal for theft of Carrier property. We cannot conclude that the Claimant's dismissal was unfair, arbitrary, or a discriminatory exercise of the Carrier's discretion to determine penalties. Consequently, the claim must be denied.

Form 1
Page 3

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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 15th day of January 2010.