

Award No. 6637
Docket No. CL-6540

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: The Brotherhood respectfully requests that Mr. L. W. Koerner be reinstated to service of the Carrier as Storehelper in their Northtown Store, Minneapolis, Minnesota, with restoration of his seniority and wage compensation lost representing the difference in moneys earned in outside employment and that which he would have earned in Carrier's service as a Storehelper from November 15, 1950, approximately sixty days subsequent to the date he was removed from service to the date he is reinstated.

OPINION OF BOARD: Claimant, a Storehelper with a 9½ year clear service record, was detected in the act of pilfering tools and materials of the Carrier of a total value of about \$10.54. The next day he signed a written confession and was dismissed from service subject to a formal investigation.

The day before the date set for the formal investigation Claimant called on the Division Storekeeper and signed a document waiving his rights to an investigation, again confessing and asking for leniency. This document was witnessed by Claimant's Division Chairman, who had accompanied him.

Of course Claimant gave the waiver in the hope or expectation that the plea for leniency would be granted. But despite ultimate appeal to the Chief of Personnel of the Carrier, the plea was denied.

First. In signing the waiver, Claimant was not overreached, as the Claimant was in Award 6399. Here the validity of the confessions stands unimpeached. Moreover, in giving the second confession and the waiver, Claimant was accompanied by his Organization representative and it was they, and not the Carrier, who initiated the idea of the waiver. Finally it is not established by the record that any promise was made that leniency would be extended. The most that appears, apart from Claimant's hopes or expectations, is that the plea for leniency "would be given consideration" and that the Division Storekeeper would so recommend. The Division Storekeeper did make such a recommendation, as did another Storekeeper, and upon ultimate consideration the plea was denied.

Second. It does appear that denial of the plea for leniency was motivated by consideration of a "recurrence of pilfering of Company property at Northtown by other employees." This is claimed to be a manifestation of bias or prejudice on the part of the Carrier.

Deterrence is a recognized element in any system of discipline; and while the prevalence of pilfering would not be relevant evidence of guilt, we cannot say that it was an improper consideration upon confession and a plea for leniency.

Upon consideration of the record, there is no basis for finding that the discretion exercised by the Carrier was abused (see Awards 2696, 4615, 5297 and 6085).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 and the Carrier's action should stand.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1954.