



Award No. 18901

Docket No. SG-18975

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company that:

Appeal of C. Moraites, Maintainer C. & S., from dismissal from service as shown on Form G-32-Notice of Discipline, dated May 14, 1969. (Carrier's File: System Docket No. 692 - Eastern Region - Harrisburg Division.)

OPINION OF BOARD: On March 7, 1969, an investigation was held wherein the Claimant was charged with unauthorized removal of company material from Penn Central property. Thereafter, and on March 22, 1969, a trial was held wherein Claimant was charged with unauthorized removal of company material from Penn Central property which was sold for personal gain; with being absent from duty without permission on January 23, 1969; and with giving false information at the investigation held on March 7, 1969. Claimant pleaded guilty to the latter two charges, but entered a plea of not guilty to the first charge. As a result of this trial, Claimant was dismissed from service. The Organization alleges that Carrier failed to meet its burden of proof on the charge of removal of company material which was sold for personal gain by Claimant and that the imposition of a dismissal penalty was arbitrary, malicious and in bad faith when taken in the light of a finding of guilty on the latter two charges only. Carrier submits that it did meet its burden of proof on all three charges, and that, therefore, Carrier's action in dismissing Claimant should be upheld.

The only question involved in this dispute is whether or not the Carrier sustained its burden of proof on the charge that Claimant was guilty of unauthorized removal of company material from Penn Central property which was sold for personal gain. The record discloses that Claimant gave a voluntary statement to various officers admitting that he had cut the involved wire from Carrier's abandoned lines; that he had put it in his truck; had taken it back to headquarters and stored it; that he had sold it at a junk yard and that he had engaged in this type of operation for not more than 3, but not less than 2 years. This voluntary statement constitutes competent probative evidence. Therefore, this Board finds that the Claimant was afforded a fair and impartial hearing; that the finding of guilty as charged is supported by substantial evidence; and that the discipline imposed is reasonable. Carrier's action in this case must be affirmed.

Also, this Board is without jurisdiction to impose leniency contrary to the punishment assessed by Carrier upon a clear and concise finding of guilty of these serious charges. Leniency in a case of this nature lies exclusively within the managerial discretion of Carrier. See Awards 13116 (Hamilton), 10789 (Ray), 14800 (Lynch), 18360 (Dugan), and many others.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of December, 1971.