

Award No. 19005
Docket No. CL-19411

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6969) that:

1. The Carrier violated the Clerk's Agreement when on January 26, 1971, it dismissed Foreman Earl C. Snead from service based on charges not substantially proven.
2. Foreman Earl C. Snead shall now be reinstated to the service of the Carrier with seniority and other rights unimpaired.
3. Foreman Earl C. Snead shall now be compensated for all wages lost plus 6% interest on such losses until reinstated.
4. Foreman Earl C. Snead's record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violations named herein.

OPINION OF BOARD: Foreman Earl C. Snead an employe with twenty-four years service was dismissed on a charge of "Improper performance of duty in that while on duty as a Foreman in the Mail and Baggage Department, about 3:30 A. M., January 7, 1971, having direct knowledge of parcels of U. S. Mail laying in a dismembered state in the Red Cap lavatory located in the West Basement, you wilfully and intentionally failed to make a report of same to either your supervisor or a representative of the U. S. Post Office."

The sole issue for determination is whether Carrier's action in dismissing Claimant is supported by substantive evidence. After a thorough review of the record we are persuaded that Carrier failed to provide substantive proof that Claimant was guilty of the misconduct with which he is charged. No evidence was adduced at the hearing indicating that Claimant knew that the plastic containers came from the mail. Claimant denied that he knew the containers were mail matter, he denied knowledge of any U. S. Mail being in the trash cans; nor did he have knowledge that this was stolen mail. This testimony is uncontroverted.

being in a dismembered state in the lavatory as charged. Naturally he was
There is not a scintilla of proof that Claimant had any knowledge of mail

not required to report this to his supervisor if he had no knowledge that it was mail. For all he knew it was merely trash.

The dismissal was based solely on surmise and suspicion, but this is insufficient to prove the Claimant's guilt. See Awards 18551, 18817.

The Board therefore directs that Claimant be reinstated to the service of the Carrier with seniority and other rights unimpaired, that he shall be compensated for all wages lost less compensation earned by Claimant in outside employment, and that his record be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein. Interest of 6% shall not be allowed.

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 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 violated.

AWARD

Claim sustained and to be disposed of in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.