

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21323
Docket Number CL-21146

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
(Robert W. Blanchette, Richard C. Bond
and John H. McArthur, Trustees of the
Property of Penn Central Transportation
Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7772) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Claimant, S. V. Frankiewicz, Clerk at the Carrier's Frankford Trail Van Yard in Philadelphia, Pennsylvania.

(b) Claimant, S. V. Frankiewicz' record be cleared of the charges brought against him on October 16, 1973.

(c) Claimant S. V. Frankiewicz be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: This is a discipline dispute in which Claimant, an employe with thirty-nine years of service, was discharged. He was charged with unauthorized possession of a color television set which was removed from a trailer in the terminal in which he worked. The record discloses that a trailer was burglarized between 8:30 P.M. and 3:30 A.M. on October 11 - 12, 1973 and eleven television sets were removed, while the trailer was enroute from the manufacturer to the ultimate consignee and while the trailer was in the terminal in question. The FBI, who had been investigating thefts at the terminal, stopped Claimant upon his leaving work at about 8:00 A.M. on October 12th and found one of the stolen sets in the trunk of his car.

The key questions in this case are whether or not Claimant committed a punishable act and if so whether the discipline imposed was warranted. It must be noted that Claimant explained the facts by indicating that during his coffee break, between 2:25 and 2:35 A.M. he drove to a nearby restaurant and in the parking lot of that restaurant an unknown man approached him and offered him a new 19" Color TV for \$150. He paid cash for the set and put it into the trunk of his car; he received no receipt for the transaction.

First it must be noted that this Board may not make any credibility findings; that prerogative is properly reserved to the hearing officer. Clearly, in this dispute the hearing officer did not credit Claimant's story. It is also noted that there is no allegation that Claimant "stole" the TV set. Petitioner asserts that there was no proof that Claimant committed a punishable act and furthermore under no circumstances should Claimant, with thirty-nine years of unblemished service, have been dismissed.

At best, from Petitioner's point of view, Claimant bought and was in possession of stolen goods, which had been removed from Carrier's property. Whether or not Claimant's action constituted a criminal offense is immaterial to this case. Under the most reasonable interpretation, Claimant's actions in purchasing the TV, arguendo, was dishonest per se, since it was obviously stolen merchandise. Certainly after his many years of service he must have at least suspected the nature of the merchandise and it was common knowledge that pilferage was a serious problem with Carrier.

We concur in the opinion expressed in Award 16168, in which this Board said:

"Dishonesty, in any form, is a matter of serious concern and dishonesty usually and frequently results in dismissal from the service of a carrier.

This Board has held on numerous occasions that dismissal from service for dishonest acts is not an excessive application of discipline or an abuse of discretion."

On many occasions this Board has held that years of service alone does not mitigate improper conduct by employees and this case is no exception. While we are reluctant to sustain the ultimate penalty of dismissal for long service employees, it cannot be said that the decision of Carrier in this case was arbitrary or capricious; the Carrier possesses considerable latitude in the imposition of discipline and under the circumstances herein we are not inclined to substitute our judgment for that of Carrier (see Awards 9045, 18006 and many others).

For all the reasons indicated and based on the entire record, the Claim must be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.