

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21722  
Docket Number CL-21892

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employes  
(  
(Western Maryland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
GL-8271, that:

(1) Carrier violated the Agreement between the parties when it arbitrarily dismissed Freight Handler E. S. Duppins from service effective December 23, 1975.

(2) Carrier shall, as a result, be required to reinstate Mr. Duppins to service with all rights unimpaired and compensate him for all wage loss suffered.

OPINION OF BOARD: The cause for action in this case stems from the fact that on December 4, 1975, claimant was found by Carrier's Police Officers leaving Carrier's property with 19 rolls of toilet tissue in the trunk of his automobile. After a hearing on the charge of "alleged theft" of the toilet tissue, and under the terms and conditions of a prior reinstatement to service Agreement dated March 3, 1972, claimant was dismissed from Carrier's service effective December 23, 1975.

The Agreement of March 3, 1972, referred to above which was signed by both the claimant and the organization resulted from a request to reinstate claimant to service on a leniency basis following a prior proven incident involving "larceny of merchandise" and contained the following pertinent terms and conditions:

"\* \* \* It is understood and agreed that the Railroad has the full and absolute right in its own discretion without the right of contest or challenge by Mr. Duppins or his representatives by virtue of any rule or requirement contained in said agreement with the BRAC or by challenge in any

"court, to dismiss Freight Handler Duppins if it determines by way of investigation of any report or information that the claimant has misappropriated company property or material entrusted to its care. This determination shall be within the sole judgement of the Railroad and shall not be subject to any standards of or challenge by the laws of this State or otherwise. Any such termination shall be with permanent loss of any seniority theretofore accrued by Mr. Duppins. It is agreed that the requirements of Rule 30 of the agreement with the BRAC are waived as above set forth insofar as any future misappropriation of property or material by Mr. Duppins is concerned and all parties signatory hereto hereby agree that no claim shall be made for loss of earnings incident to the termination of employment and forfeiture of seniority of E. S. Duppins as a result of his violation of the within agreement.  
\* \* \*."

The hearing record in the instant case contains substantial evidence, including claimant's own contradictions and admissions, to show that the merchandise in question was Carrier's property which claimant picked up at the storeroom on the day in question and "forgot to put it where it was supposed to go."

The organization contends that Carrier's reference to the March 3, 1972 Agreement is indicative of "predisposition by the Carrier, so much so as to indicate prejudice against Mr. Duppins."

We do not agree.

Instead, the following Opinion expressed in First Division Award No. 23025 (Zumas) is applicable here and we adopt and endorse it:

"The Board is of the opinion that the claim must be denied. Claimant and his Organization representative entered into a binding agreement accepting limited and conditional service in consideration for reinstatement. Presented with such binding agreement, there is nothing to be adjudicated before this Board."

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. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.