

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22319
Docket Number MW-22289

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Fuel Truck Driver Victor C. Owens was without just and sufficient cause and extremely disproportionate to the offense with which he was charged (System Docket 314 CRW 3-77).

(2) The claimant shall be restored to service with seniority, vacation and all other rights unimpaired and he shall be reimbursed for all monetary loss suffered as a consequence of the aforesaid dismissal."

OPINION OF BOARD: The Claimant was charged with misusing Carrier property on four separate dates in August, 1976. The trial was held in January, 1977, and he was discharged. He appeals from the discharge arguing it was without just and sufficient cause and it was disproportionate to the offense.

The evidence established by the trial record substantiates the Carrier's conclusion regarding the guilt of the Claimant. While the value of the property was minor, the question of Claimant's misuse of the same cannot be considered inconsequential.

The Claimant admitted his culpability and expressed his regret for the trouble he had caused. Assuming his sincerity, this can be considered in mitigation of the penalty assessed. He should understand however, that any further proven incidents of this nature will justify Carrier's severest discipline and this Board will not intervene. The Claimant will be reinstated with seniority unimpaired but without pay for time lost, with the understanding Carrier will deduct from his first pay the value of the property misused.

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 discipline should be modified.

A W A R D

Claim disposed of per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.

