

CEH

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22635
Docket Number CL-21987

Dana E. Eischen, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8314, that:

"1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin on December 31, 1975 when it arbitrarily dismissed employee William P. Ciesinski from service without affording him a fair and impartial investigation.

2) Carrier shall now be required to restore William P. Ciesinski on his regularly assigned position, with all rights unimpaired and compensate him for all time lost and all expenses he incurred in his defense to commence January 1, 1976 and continue until he is restored to service."

OPINION OF BOARD: Following due notice, and a hearing Claimant was found guilty and dismissed from service effective December 31, 1975 on the following charge:

"1. Stealing Company property consisting of pipe fittings on December 9, 1975, at approximately 3:30 p.m."

During appeals on the property the parties settled upon the reinstatement of Claimant on a "leniency basis" effective February 17, 1976 without prejudice to processing of the instant claim. Thus, if arguendo the claims were sustained damages would be limited to the period January 1, 1976 - February 16, 1976 when Claimant was held out of service.

After carefully reviewing the file however, we find no reason to set aside Carrier's conclusions regarding Claimants culpability.

The evidence of record overwhelmingly establishes that he was leaving the property in possession of pipe unions of a type and brand used by Carrier and not sold by Sears where he claims he purchased the fittings and unions in question. Although the evidence against him was circumstantial it was substantial nonetheless. See Award 20781. We cannot conclude that Carrier abused its discretion in concluding from the record of investigation that Claimant was guilty as charged.

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.

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 30th day of November 1979.

