

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22745
Docket Number MW-22799

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Norfolk Southern Railway Company

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

(1) The dismissal of Foreman C. F. Manning was without just and sufficient cause and on the basis of unproven charges /System File C-2(13)NS-CFM/MW-124/.

(2) The claimant's record be cleared of the charges placed against him, he be reinstated with seniority and all other rights unimpaired and he be compensated for all wage loss suffered."

OPINION OF BOARD: The claimant entered Carrier's service as roadway laborer on September 9, 1963. At the time of the occurrence out of which the present dispute arose he was assigned as roadway foreman, with seniority date of September 29, 1969.

Reports were received by the Carrier in March, 1977, that a vacant house located adjacent to Carrier's tracks had been burglarized and goods valued at approximately \$1,000.00 stolen. After some preliminary investigation by Carrier's officers, claimant was notified on March 23, 1977, to attend an investigation on March 30, 1977, at Washington, North Carolina. Claimant and two other employes of the gang under his supervision were charged with violation of operating rule GR-5 and with conduct unbecoming an employe in connection with the alleged burglary.

The investigation was conducted as scheduled, following which claimant was notified on April 16, 1977, of his dismissal from service. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript of the investigation shows that the investigation was conducted in a fair and impartial manner. None of claimant's substantive procedural rights was violated in the investigation or in the appeal on the property.

There was substantial evidence presented at the investigation in support of the charge against claimant. While there were conflicts

in the evidence presented, it is well settled that this Board will not attempt to resolve conflicts in evidence. Neither will the Board weigh evidence or pass upon the credibility of witnesses. Those functions are reserved to the Carrier.

The Board also takes judicial notice of the criminal proceedings in the case, which culminated in claimant entering a plea of guilty to charge of felonious breaking and entering, being sentenced to four years' suspended sentence upon payment of court costs and restitution of \$1,000.00 to the estate of the former owner of the house that had been burglarized.

It is a generally accepted tenet in the railroad industry that dishonesty is a dismissal offense. There is no proper basis for this Board to interfere with the discipline imposed by the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.