

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23085
Docket Number MW-23294

Paul C. Carter, 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 Truck Driver Jacobowsky Johnson for alleged theft of gasoline from Conrail Vehicle G-8051 was without just and sufficient cause and wholly disproportionate to such offense (System Docket No. 483).

(2) Claimant Jacobowsky Johnson shall be reinstated with seniority and vacation rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant had been in Carrier's service about four (4) years. At the time of the occurrence giving rise to the dispute herein, he was assigned as a truck driver, with tour of duty 7:00 A.M.-3:00 P.M., rest days Saturday and Sunday.

According to the Carrier, at approximately 9:30 P.M., Sunday, June 10, 1979, Claimant was apprehended by a U. S. Park Police Officer siphoning gasoline from a Conrail truck at the Ash Track at Carrier's Benning Yard. Claimant was removed from the service and notified on June 14, 1979 to attend a trial on June 21, 1979 in connection with the charge:

"Theft of gasoline from Conrail vehicle G-8051 on
June 10, 1979 at approximately 9:30 P.M. at the
Ash Track of Benning Yard."

Following the trial, Claimant was notified on July 13, 1979 that he was dismissed in all capacities.

A copy of the transcript of the trial, or investigation, has been made a part of the record. We have carefully reviewed the transcript and find that none of Claimant's substantive procedural rights was violated. There was substantial evidence in support of the charge. While there were conflicts between the statement of Claimant and other witnesses, it is not the function of this Board to weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

There is no proper basis for this Board to interfere with the discipline imposed. The Carrier is not required to retain in its service an employee who is dishonest.

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 15th day of December 1980.

