

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23413

Docket Number CL-23246

Rodney E. Dennis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
{ Freight Handlers, Express and Station Employees  
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8944) that:

1. Carrier violated the effective Clerks' Agreement when, following an investigation on January 16, 1979, it assessed discipline in the form of a reprimand against the record of Joseph Russo.

2. Carrier shall now be required to remove the reprimand from Joseph Russo's record and shall clear his record of the charge placed against him.

OPINION OF BOARD: Claimant Joseph Russo worked as a stockman in the Stores Department. On January 8, 1979, due to the illness of the regularly assigned laborer who handled the company gas pump, claimant was assigned to the pump at about 10:30 a.m. During the hours that claimant was responsible for pumping gas, Carrier's police chief discovered that the gas pump was unlocked. At about 11:20 a.m., an investigation was undertaken and Stockman E. Pentik and claimant were found responsible and assessed a reprimand. Claimant grieved Carrier's action and the case is now before this Board.

The record of this case reveals that claimant received a full and fair hearing and that, in fact, claimant was in charge of the gas pump when it was discovered to be unlocked. The Organization argues that Carrier did not prove beyond a doubt that claimant left the lock open and therefore this Board must sustain the claim.

This Board cannot accept that argument. While the burden of proof clearly rests with Carrier in discipline cases, Carrier is not required to prove guilt beyond a doubt, but only by a preponderance of probative evidence. In this case, a chain of direct and circumstantial evidence points directly to claimant as the one who left the gas pump unlocked. The police chief and a police sergeant testified that they observed the lock unlocked. The superintendent found the pump unlocked and pumped his own gas. He then reported this open lock to the storehouse supervisor. The gas pump records reveal that claimant was the only other person to pump gas after 10:30 a.m. They also reveal that all gas pumped was accounted for and that no unauthorized persons received or pumped gas.

When one reviews the evidence in this case, it is more logical to conclude that claimant left the lock unlocked than that he did not. Carrier has carried its burden of proof and it does have the right to administer discipline. While this Board may not have administered discipline had it been the initial trier of the facts, it cannot substitute its judgment for that of Carrier in this instance.

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. Paulsen*  
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Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

